

**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

T.D. 9487, page 48.

Final regulations under section 382 of the Code provide guidance regarding the treatment of prepaid income under the built-in gain provisions of section 382(h).

EXEMPT ORGANIZATIONS

Announcement 2010-44, page 54.

The IRS has revoked its determination that E.M. Jones Day Care Center, Inc., of Milwaukee, WI; Northstar Home Ownership Foundation, Inc., of West Dundee, IL; Foundation for an Educated America of New Orleans, LA; and Helping Others by Providing Education of Reynoldsburg, OH, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

ADMINISTRATIVE

T.D. 9488, page 51.

Final regulations under section 6404(g)(2)(E) of the Code provide rules with respect to the suspension of any interest, penalty, addition to tax, or additional amount with respect to listed transactions or undisclosed reportable transactions.

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 en-

force the law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

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

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

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

26 CFR 1.382-2T: Definition of ownership change under section 382, as amended by the tax reform act of 1986 (temporary).

T.D. 9487

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Built-in Gains and Losses Under Section 382(h)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that apply to loss corporations that have undergone an ownership change within the meaning of section 382. These regulations provide guidance regarding the treatment of prepaid income under the built-in gain provisions of section 382(h).

DATES: *Effective Date:* These regulations are effective on June 11, 2010.

Applicability Date: For dates of applicability, see §1.382-7(b).

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley, (202) 622-7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR Part 1. On June 14, 2007, temporary regulations (T.D. 9330, 2007-2 C.B. 239 [72 FR 32792]) regarding the treatment of prepaid income under the built-in gain provisions of section 382(h) were published in the **Federal Register**. A notice of proposed rulemaking (NPRM)

(REG-144540-06, 2007-2 C.B. 296) cross-referencing to temporary regulations was published in the **Federal Register** for the same day (72 FR 32828). The temporary regulations provided that prepaid income is not recognized built-in gain (“RBIG”) for purposes of section 382(h). They further provided that *prepaid income* means any amount received prior to the change date that is attributable to performance occurring on or after the change date. Examples of prepaid income include, but are not limited to, income received prior to the change date that is deferred until the five year section 382 recognition period under section 455, §1.451-5, or Rev. Proc. 2004-34, 2004-1 C.B. 991 (June 1, 2004) (or any successor revenue procedure) (see §601.601(d)(2)(ii)(b)). These prepaid income provisions permit deferral in order to better match the taxpayer’s income with the expenses incurred to earn that income and, as a result, to more clearly reflect the taxpayer’s income both in the year of receipt and in the year of performance. The IRS and the Treasury Department therefore view such income to be properly attributable to the period when included in gross income, which may be within the recognition period. Accordingly, such income is not “attributable to periods before the change date” and so is not RBIG under section 382(h)(6)(A).

One comment was received and no public hearing was requested or held. The public comment focused on companies in the business of providing extended warranty coverage for automobiles or other products. The commenter presented an example under the facts of which the commenter argued that a portion of the prepaid income deferred to the recognition period should be treated as RBIG.

After giving consideration to the comment, the IRS and Treasury continue to believe that none of the prepaid income taken into account during the recognition period in the example should be RBIG. As noted above, where prepaid income is properly deferred from gross income under a permissible method of accounting, such deferral reflects a judgment that the income has not been earned, or, in the parlance of section 382(h)(6)(A), is not “attributable

to” prior performance. The premise of this Treasury decision is that, for purposes of section 382, there is not a compelling policy underlying section 382(h) that warrants a different timing answer for the treatment of properly deferred prepaid income.

Accordingly, the proposed regulations set forth in the NPRM (REG-144540-06), which cross-referenced to the temporary regulations for their substance, are adopted with no substantive change by this Treasury decision, and the corresponding temporary regulations are removed.

Special Analyses

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to 5 U.S.C. 553(d)(3), it has been determined that good cause exists to dispense with a delayed effective date on grounds that this regulation, which is substantively identical to currently effective temporary regulations, merely continues to provide necessary guidance to taxpayers with respect to the treatment of prepaid income under the built-in gain provisions of section 382(h). It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations only apply in the rare circumstance in which a qualifying loss corporation that uses a particular accounting method undergoes an ownership change. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Keith E. Stanley of the Office of Associate Chief Counsel (Corporate). Other personnel from the IRS and the Treasury Department participated in their development.

- (xi) Certain transfers of options disregarded.
- (xii) Exercise of an option that has not been treated as stock.
- (xiii) Effective date.
- (5) Stock transferred under certain agreements.
- (6) Family attribution.
 - (i) [Reserved]
 - (j) Aggregation and segregation rules.
- (1) Aggregation of public shareholders and public owners into public groups.
 - (i) Public group.
 - (ii) Treatment of public group that is a 5-percent shareholder.
 - (iii) Presumption of no cross-ownership.
 - (iv) Identification of the public groups treated as 5-percent shareholders.
 - (A) Analysis of highest tier entities.
 - (B) Analysis of other higher tier entities and first tier entities.
 - (C) Aggregation of the public shareholders.
 - (v) Appropriate adjustments.
 - (vi) Examples.
- (2) Segregation rules applicable to transactions involving the loss corporation.
 - (i) In general.
 - (ii) Direct public group.
 - (iii) Transactions to which segregation rules apply.
 - (A) In general.
 - (B) Certain equity structure shifts and transactions to which section 1032 applies.
 - (1) In general.
 - (2) Examples.
 - (C) Redemption-type transactions.
 - (1) In general.
 - (2) Examples.
 - (D) Acquisition of loss corporation stock as the result of the ownership of a right to acquire stock.
 - (1) In general.
 - (2) Example.
 - (E) Transactions identified in the Internal Revenue Bulletin.
 - (F) Issuance of rights to acquire loss corporation stock.
 - (1) In general.
 - (2) Example.
 - (iv) Combination of *de minimis* public groups.
 - (A) In general.
 - (B) Example.
 - (v) Multiple transactions.
 - (A) In general.

- (B) Example.
- (vi) Acquisitions made by either a 5-percent shareholder or the loss corporation following application of the segregation rules.
- (3) Segregation rules applicable to transactions involving first tier entities or higher tier entities.
 - (i) Dispositions.
 - (ii) Example.
 - (iii) Other transactions affecting direct public groups of a first tier entity or higher tier entity.
 - (iv) Examples.
 - (v) Acquisitions made by a 5-percent shareholder, a higher tier entity, or a first tier entity following application of the segregation rules.
 - (k) Operating rules.
 - (1) Presumptions regarding stock ownership.
 - (i) Stock subject to regulation by the Securities and Exchange Commission.
 - (ii) Statements under penalties of perjury.
 - (2) Actual knowledge regarding stock ownership.
 - (3) Duty to inquire as to actual stock ownership in the loss corporation.
 - (4) Ownership interests structured to avoid the section 382 limitation.
 - (5) Example.
 - (6) First tier entity or higher tier entity that is a foreign corporation or entity. [Reserved]
 - (l) Changes in percentage ownership which are attributable to fluctuations in value. [Reserved]
 - (m) Effective date.
 - (1) In general.
 - (2) Plan of reorganization.
 - (3) Earliest commencement of the testing period.
 - (4) Transitional rules.
 - (i) Rules provided in paragraph (j) of this section for testing dates before September 4, 1987.
 - (ii) Example.
 - (iii) Rules provided in paragraph (j) of this section for testing dates on or after September 4, 1987.
 - (iv) Rules provided in paragraphs (f)(18)(ii) and (iii) of this section.
 - (v) Rules provided in paragraph (a)(2)(ii) of this section.
 - (vi) Rules provided in paragraph (h)(4) of this section.

- (vii) Rules provided in paragraph (a)(2)(i) of this section.
 - (5) Bankruptcy proceedings.
 - (i) In general.
 - (ii) Example.
 - (6) Transactions of domestic building and loan associations.
 - (7) Transactions not subject to section 382.
 - (i) Application of old section 382.
 - (ii) Effect on testing period.
 - (iii) Termination of old section 382. [Reserved]
 - (8) Options issued or transferred before January 1, 1987.
 - (i) Options issued before May 6, 1986.
 - (ii) Options issued on or after May 6, 1986 and before September 18, 1986.
 - (iii) Options issued on or after September 18, 1986 and before January 1, 1987.
 - (9) Examples.
 - Par. 3. Section 1.382-1 is amended by:
 1. Revising the introductory text.
 2. Removing the entry for §1.382-1T.
 3. Removing the entries for §1.382-2T.
 4. Adding the entries for §1.382-7.
 The revisions and the additions read as follows:

§1.382-1 Table of contents.

This section lists the captions that appears in the regulations for §§1.382-2 through 1.382-11.

* * * * *

§1.382-7 Built-in gains and losses.

- (a) Treatment of prepaid income.
- (b) Effective/applicability dates.

* * * * *

Par. 4. Section 1.382-7 is added to read as follows:

§1.382-7 Built-in gains and losses.

(a) *Treatment of prepaid income.* For purposes of section 382(h), prepaid income is not recognized built-in gain. The term *prepaid income* means any amount received prior to the change date that is attributable to performance occurring on or after the change date. Examples to which this paragraph (a) will apply include, but are not limited to, income received prior to the change date that is deferred under section 455, §1.451-5, or Rev. Proc. 2004-34, 2004-1 C.B. 991 (June 1, 2004)

(or any successor revenue procedure) (see §601.601(d)(2)(ii)(b)).

(b) *Effective/applicability dates.* This section applies to loss corporations that have undergone an ownership change on or after June 11, 2010. For loss corporations that have undergone an ownership change before June 11, 2010, see §1.382-7T as contained in 26 CFR part 1, revised April 1, 2009.

§1.382-7T [Removed]

Par. 5. Section 1.382-7T is removed.

Steven T. Miller,
*Deputy Commissioner for
Services and Enforcement.*

Approved June 8, 2010.

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

(Filed by the Office of the Federal Register on June 11, 2010, 4:15 p.m., and published in the issue of the Federal Register for June 16, 2010, 75 F.R. 33990)

Section 6404.—Abate- ments

26 CFR 301.6404-4: *Suspension of interest and certain penalties when the Internal Revenue Service does not timely contact the taxpayer.*

T.D. 9488

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

Interest and Penalty Suspension Provisions Under Section 6404(g) of the Internal Revenue Code

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 6404(g)(2)(E) of the Internal Revenue Code on the suspension of any interest, penalty, addition to tax, or additional amount with respect

to listed transactions or undisclosed reportable transactions. The final regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, the Tax Relief and Health Care Act of 2006, and the Small Business and Work Opportunity Tax Act of 2007. The regulations provide guidance to individual taxpayers who have participated in listed transactions or undisclosed reportable transactions.

DATES: *Effective Date:* These regulations are effective on June 16, 2010.

Applicability Date: These regulations apply to interest relating to listed transactions and undisclosed reportable transactions accruing before, on, or after October 3, 2004.

FOR FURTHER INFORMATION CONTACT: Matthew Lucey, (202) 622-3630 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Procedure and Administration Regulations (26 CFR part 301) by adding rules under section 6404(g) relating to the suspension of interest, penalties, additions to tax, or additional amounts with respect to listed transactions or undisclosed reportable transactions. Section 3305 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 685, 743) (RRA 98), added section 6404(g) to the Code, effective for taxable years ending after July 22, 1998. Section 6404(g) generally suspends interest and certain penalties if the IRS does not contact a taxpayer regarding possible adjustments to the taxpayer's liability within a specified period of time. Section 903(c) of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418, 1652) (AJCA), excepted from the general interest suspension rules any interest, penalty, addition to tax, or additional amount with respect to a listed transaction or an undisclosed reportable transaction, effective for interest accruing after October 3, 2004. Section 303 of the Gulf Opportunity Zone Act of 2005,

Public Law 109-135 (119 Stat. 2577, 2608-09) (GOZA), modified the effective date of the exception from the suspension rules for certain listed and reportable transactions. Section 426(b) of the Tax Relief and Health Care Act of 2006, Public Law 109-432 (120 Stat. 2922, 2975), provided a technical correction regarding the authority to exercise the "reasonably and in good faith" exception to the effective date rules. Section 8242 of the Small Business and Work Opportunity Tax Act of 2007, Public Law 110-28 (121 Stat. 190, 200), extended the current eighteen-month period within which the IRS can, without suspension of interest, contact a taxpayer regarding possible adjustments to the taxpayer's liability to thirty-six months, effective for notices provided after November 25, 2007.

On June 21, 2007, the Treasury Department and the IRS published in the **Federal Register** temporary regulations (T.D. 9333, 2007-2 C.B. 350 [72 FR 34176]) and a notice of proposed rule-making (REG-149036-04, 2007-2 C.B. 365 [72 FR 34204]) by cross-reference to temporary regulations. No written comments were received, and no public hearing was requested or held. Accordingly, the final regulations adopt the rules of the temporary regulations and the temporary regulations are removed. See §601.601(d)(2)(ii)(b).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. A regulatory assessment is therefore not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 USC chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 USC chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the NPRM by cross-reference to temporary regulations preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

Drafting Information

The principal author of these regulations is Matthew Lucey of the Office of Associate Chief Counsel (Procedure and Administration).

Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

PART 301 PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6404-0 is added to read as follows:

§301.6404-0 Table of Contents.

* * * * *

§301.6404-4 Suspension of interest and certain penalties when the Internal Revenue Service does not timely contact the taxpayer.

(a) [Reserved].

(b)(1) through (b)(4) [Reserved].

(5) Listed transactions and undisclosed reportable transactions.

(i) In general.

(ii) Special rule for certain listed or undisclosed reportable transactions.

(A) Participant in a settlement initiative.

(1) Participant in a settlement initiative who as of January 23, 2006, had not reached agreement with the IRS.

(2) Participant in a settlement initiative who, as of January 23, 2006, had reached agreement with the IRS.

(B) Taxpayer acting in good faith.

(1) In general.

(2) Presumption.

(3) Examples.

(C) Closed transactions.

(c) [Reserved].

(d) Effective date.

Par. 3. Section 301.6404-4 is added to read as follows:

§301.6404-4 Suspension of interest and certain penalties when the Internal Revenue Service does not timely contact the taxpayer.

(a) [Reserved].

(b)(1) through (4) [Reserved].

(5) *Listed transactions and undisclosed reportable transactions*—(i) *In general.* The general rule of suspension under section 6404(g)(1) does not apply to any interest, penalty, addition to tax, or additional amount with respect to any listed transaction as defined in section 6707A(c) or any undisclosed reportable transaction. For purposes of this section, an *undisclosed reportable transaction* is a reportable transaction described in the regulations under section 6011 that is not adequately disclosed under those regulations and that is not a listed transaction. The date that the IRS provides notice to the taxpayer specifically stating the taxpayer's liability regarding a listed transaction or an undisclosed reportable transaction and the basis for that liability is the controlling date for determining whether the transaction is a listed transaction or an undisclosed reportable transaction for purposes of the suspension rules under section 6404(g).

(ii) *Special rule for certain listed or undisclosed reportable transactions.* With respect to interest relating to listed transactions and undisclosed reportable transactions accruing on or before October 3, 2004, the exception to the general rule of interest suspension will not apply to a taxpayer who is a participant in a settlement initiative with respect to that transaction, to any transaction in which the taxpayer has acted reasonably and in good faith, or to a closed transaction. For purposes of this special rule, a "participant in a settlement initiative," a "taxpayer acting in good faith," and a "closed transaction" have the following meanings:

(A) *Participant in a settlement initiative*—(1) *Participant in a settlement initiative who, as of January 23, 2006, had not reached agreement with the IRS.* A participant in a settlement initiative includes a taxpayer who, as of January 23, 2006, was participating in a settlement initiative described in Internal Revenue Service Announcement 2005-80, 2005-2 C.B. 967. See §601.601(d)(2)(ii)(b) of this chapter. A taxpayer participates in the initiative by complying with Section 5 of the An-

nouncement. A taxpayer is not a participant in a settlement initiative if, after January 23, 2006, the taxpayer withdraws from or terminates participation in the initiative, or the IRS determines that a settlement agreement will not be reached under the initiative within a reasonable period of time.

(2) *Participant in a settlement initiative who, as of January 23, 2006, had reached agreement with the IRS.* A participant in a settlement initiative is a taxpayer who, as of January 23, 2006, had entered into a settlement agreement under Announcement 2005-80 or any other prior or contemporaneous settlement initiative either offered through published guidance or, if the initiative was not formally published, direct contact with taxpayers known to have participated in a tax shelter promotion.

(B) *Taxpayer acting in good faith*—(1) *In general.* The IRS may suspend interest relating to a listed transaction or an undisclosed reportable transaction accruing on or before October 3, 2004, if the taxpayer has acted reasonably and in good faith. The IRS's determination of whether a taxpayer has acted reasonably and in good faith will take into account all the facts and circumstances surrounding the transaction. The facts and circumstances include, but are not limited to, whether the taxpayer disclosed the transaction and the taxpayer's course of conduct after being identified as participating in the transaction, including the taxpayer's response to opportunities afforded to the taxpayer to settle the transaction, and whether the taxpayer engaged in unreasonable delay at any stage of the matter.

(2) *Presumption.* If a taxpayer and the IRS promptly enter into a settlement agreement with respect to a transaction on terms proposed by the IRS or, in the event of atypical facts and circumstances, on terms more favorable to the taxpayer, and the taxpayer has complied with the terms of that agreement without unreasonable delay, the taxpayer will be presumed to have acted reasonably and in good faith except in rare and unusual circumstances. Rare and unusual circumstances must involve specific actions involving harm to tax administration. Even if a taxpayer does not qualify for the presumption described in this paragraph (b)(5)(iii)(B)(2), the taxpayer may still be granted interest suspension under the general facts and

circumstances test set forth in paragraph (b)(5)(iii)(B)(I) of this section.

(3) *Examples.* The following examples illustrate the rules the IRS uses in determining whether a taxpayer has acted reasonably and in good faith.

Example 1. The taxpayer participated in a listed transaction. The IRS, in a letter sent directly to the taxpayer in July 2005, proposed a settlement of the transaction. The taxpayer informed the IRS of his interest in the settlement within the prescribed time period. The revenue agent assigned to the taxpayer's case was not able to calculate the taxpayer's liability under the settlement or tender a closing agreement to the taxpayer until March 2006. The taxpayer promptly executed the closing agreement and returned it to the IRS with a proposal for arrangements to pay the agreed-upon liability. The IRS agreed with the proposed arrangements for full payment. For purposes of the application of section 6404(g)(2)(E), the taxpayer has acted reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will be suspended.

Example 2. The facts are the same as in *Example 1*, except that the letter was sent by the IRS in February 2006, and the closing agreement was tendered to the taxpayer in April 2006. For purposes of the application of section 6404(g)(2)(E), the taxpayer has acted reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will be suspended.

Example 3. The taxpayer participated in a listed transaction. In response to an offer of settlement extended by the IRS in August 2005, the taxpayer informed the IRS of her interest in entering into a closing agreement on the terms proposed by the IRS. The revenue agent assigned to the transaction calculated the taxpayer's liability under the settlement and tendered a closing agreement to the taxpayer in November 2005. The taxpayer executed the closing agreement but failed to make any arrangement for payment of the agreed-upon liability stated in the closing agreement. Taking into account all the facts and cir-

cumstances surrounding the transaction, the taxpayer did not act reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will not be suspended.

Example 4. The taxpayer participated in a listed transaction. In a letter sent by the IRS directly to the taxpayer in July 2005, the IRS extended an offer of settlement. The July 2005 letter informed the taxpayer that, absent atypical facts and circumstances, the taxpayer should not expect resolution of the tax issues on more favorable terms than proposed in the letter. The taxpayer declined the proposed settlement terms of the letter and proceeded to Appeals to present what the taxpayer claimed were atypical facts and circumstances. The administrative file did not contain sufficient information bearing on atypical facts and circumstances, and the taxpayer failed to provide additional information when requested by Appeals to explain how the transaction originally proposed to the taxpayer differed in structure or types of tax benefits claimed, from the transaction as implemented by the taxpayer. Appeals determined that the taxpayer's facts and circumstances were not significantly different from those of other taxpayers who participated in that listed transaction and thus, were not atypical. In September 2006, the taxpayer and Appeals entered into a closing agreement on terms consistent with those originally proposed in the July 2005 letter. The taxpayer has complied with the terms of that closing agreement. For purposes of the application of section 6404(g)(2)(E), this taxpayer is not presumed to have acted reasonably and in good faith; instead, the IRS will apply the general rule to determine whether to suspend interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated.

Example 5. The facts are the same as in *Example 4*, except that Appeals agrees that atypical facts were present that warrant additional concessions by the government. A settlement is reached on terms more favorable to the taxpayer than those proposed in the July 2005 letter. For purposes of the application of section 6404(g)(2)(E), this taxpayer is presumed to have acted reasonably and in good faith, and absent evidence of rare or unusual circumstances harmful to

tax administration, is eligible for suspension of interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated.

(C) *Closed transactions.* A transaction is considered closed for purposes of this clause if, as of December 14, 2005, the assessment of all federal income taxes for the taxable year in which the tax liability to which the interest relates is prevented by the operation of any law or rule of law, or a closing agreement under section 7121 has been entered into with respect to the tax liability arising in connection with the transaction.

(c) [Reserved].

(d) *Effective/Applicability date.* Paragraph (b)(5) of these regulations applies to interest relating to listed transactions and undisclosed reportable transactions accruing before, on, or after October 3, 2004.

§301.6404-4T [Removed]

Par. 4. Section 301.6404-4T is removed.

Steven T. Miller,
*Deputy Commissioner for
Services and Enforcement.*

Approved June 10, 2010.

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

(Filed by the Office of the Federal Register on June 11, 2010, 8:45 a.m., and published in the issue of the Federal Register for June 16, 2010, 75 F.R. 33992)

Part IV. Items of General Interest

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

Announcement 2010-44

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

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction

for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on July 12, 2010, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For indi-

vidual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

E.M. Jones Day Care Center, Inc.
Milwaukee, WI

Northstar Home Ownership Foundation,
Inc.
West Dundee, IL

Foundation for an Educated America
New Orleans, LA

Helping Others by Providing Education
Reynoldsburg, OH

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

Numerical Finding List¹

Bulletins 2010–27 through 2010–28

Announcements:

2010-43, 2010-27 I.R.B. 42

2010-44, 2010-28 I.R.B. 54

Notices:

2010-48, 2010-27 I.R.B. 9

2010-49, 2010-27 I.R.B. 10

2010-50, 2010-27 I.R.B. 12

Proposed Regulations:

REG-112841-10, 2010-27 I.R.B. 41

Revenue Procedures:

2010-25, 2010-27 I.R.B. 16

Revenue Rulings:

2010-18, 2010-27 I.R.B. 1

Treasury Decisions:

9486, 2010-27 I.R.B. 3

9487, 2010-28 I.R.B. 48

9488, 2010-28 I.R.B. 51

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2010–1 through 2010–26 is in Internal Revenue Bulletin 2010–26, dated June 28, 2010.

Finding List of Current Actions on Previously Published Items¹

Bulletins 2010–27 through 2010–28

Revenue Procedures:

2007-44

Modified by

Notice 2010-48, 2010-27 I.R.B. 9

2009-18

Obsoleted in part by

Rev. Proc. 2010-25, 2010-27 I.R.B. 16

¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2010–1 through 2010–26 is in Internal Revenue Bulletin 2010–26, dated June 28, 2010.



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

Order Processing Code:
3465

Easy Secure Internet:
bookstore.gpo.gov

Internal Revenue Cumulative Bulletins Publications and Subscription Order Form

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

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

Publications

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

Subscriptions

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

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

Standing Order Service*

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

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

Authorization

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

VISA MasterCard Discover/NOVUS American Express

Superintendent of Documents (SOD) Deposit Account

Authorizing signature (Standing orders not valid unless signed.)

Please print or type your name.

Daytime phone number (_____) _____

SuDocs Deposit Account

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

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



Check method of payment:

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

(expiration date)

Thank you for your Order!

Authorizing signature

06/06

Company or personal name

(Please type or print)

Additional address/attention line

Street address

City, State, Zip Code

E-mail address

Daytime phone including area code

Purchase order number (optional)

*Standing Order Service

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

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

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

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

INTERNAL REVENUE BULLETIN

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

CUMULATIVE BULLETINS

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

ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

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

INTERNAL REVENUE BULLETINS ON CD-ROM

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

HOW TO ORDER

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

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

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

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, \$300