

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.

EMPLOYEE PLANS

T.D. 9492, page 242.

Final regulations under section 4965 and other sections of the Code provide guidance relating to entity-level and manager-level excise taxes with respect to prohibited tax shelter transactions to which tax-exempt entities are parties; certain disclosure obligations with respect to such transactions; and the requirement of a return and time for filing with respect to section 4965 taxes.

Notice 2010-55, page 253.

This notice provides guidance on filing Form 5500 and Schedule SB for single-employer defined benefit plans for plan sponsors who are considering use of the special funding rules under section 430(c)(2)(D) of the Code, as added by the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010). New section 430(c)(2)(D) permits a plan sponsor to reduce a plan's minimum required contribution for certain years by electing to use an alternative shortfall amortization schedule. This notice also describes anticipated future guidance that will apply for sponsors of single-employer defined benefit pension plans with respect to an election to use these special funding rules.

Notice 2010-56, page 254.

This notice provides guidance on filing Form 5500 and Schedule MB for multiemployer defined benefit plans for plan sponsors who are considering use of the special funding rules under section 431(b)(8) of the Code, as added by the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), for a plan year for which the Form 5500 (and Schedule MB) is filed. This notice also describes anticipated future guidance that will apply for sponsors of multiemployer defined benefit pension plans with respect to the special funding rules.

EXEMPT ORGANIZATIONS

T.D. 9492, page 242.

Final regulations under section 4965 and other sections of the Code provide guidance relating to entity-level and manager-level excise taxes with respect to prohibited tax shelter transactions to which tax-exempt entities are parties; certain disclosure obligations with respect to such transactions; and the requirement of a return and time for filing with respect to section 4965 taxes.

ADMINISTRATIVE

REG-139343-08, page 256.

Proposed regulations under section 6109 of the Code amend the regulations relating to the imposition of certain user fees on certain tax practitioners. A public hearing is scheduled for August 24, 2010.

Announcement 2010-50, page 260.

This document contains corrections to final regulations (T.D. 9487, 2010-28 I.R.B. 48) regarding the treatment of prepaid income under the built-in gain provisions of section 382(h).

Actions Relating to Court Decisions is on the page following the Introduction.
Announcements of Disbarments and Suspensions begin on page 261.
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.

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Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in

certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally,

will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner acquiesces in result but not the reasoning in the following decision:

**Xilinx, Inc. v.
Commissioner,**¹
598 F.3d. 1191 (9th Cir. 2010),
aff'g, 125 T.C. 37 (2005).

¹ Although the Service believes the Ninth Circuit's opinion is erroneous, the Service acquiesces in the result of the decision with respect to employee stock options granted in taxable years governed by the section 482 regulations in effect prior to their amendment in 2003 because the significance of the Ninth Circuit's opinion is mooted by the 2003 amendments to Treas. Reg. §§ 1.482-1(b)(1) and 1.482-7(d).

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

Section 4965.—Excise Tax on Certain Tax-Exempt Entities Entering into Prohibited Tax Shelter Transactions

26 CFR 53.4965-1: Definition of tax-exempt party to a prohibited tax shelter transaction.

T.D. 9492

DEPARTMENT OF THE
TREASURY
Internal Revenue Service
26 CFR Parts 1, 53, 54, 301
and 602

Excise Taxes on Prohibited Tax Shelter Transactions and Related Disclosure Requirements; Disclosure Requirements with Respect to Prohibited Tax Shelter Transactions; Requirement of Return and Time for Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance under section 4965 of the Internal Revenue Code (Code), relating to entity-level and manager-level excise taxes with respect to prohibited tax shelter transactions to which tax-exempt entities are parties; sections 6033(a)(2) and 6011(g), relating to certain disclosure obligations with respect to such transactions; and sections 6011 and 6071, relating to the requirement of a return and time for filing with respect to section 4965 taxes. This action is necessary to implement section 516 of the Tax Increase Prevention Reconciliation Act of 2005. These final regulations affect a broad array of tax-exempt entities, including charities, state and local government entities, Indian tribal governments and employee benefit plans, as well as entity managers of these entities.

DATES: *Effective Date:* These regulations are effective July 6, 2010.

Applicability Date: For dates of applicability, see §§1.6033-5(f), 53.4965-9(b) and (c), 53.6071-1(h), 54.6011-1(d), 301.6011(g)-1(j) and 301.6033-5(b).

FOR FURTHER INFORMATION CONTACT: For questions concerning these regulations, contact Benjamin Akins at (202) 622-1124 or Michael Blumenfeld at (202) 622-6070. For questions specifically relating to qualified pension plans, individual retirement accounts, and similar tax-favored savings arrangements, contact Cathy Pastor at (202) 622-6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2079. The collection of information in these final regulations is in §301.6011(g)-1. The collection of information in §301.6011(g)-1 flows from section 6011(g), which requires a taxable party to a prohibited tax shelter transaction to disclose to any tax-exempt entity that is a party to the transaction that the transaction is a prohibited tax shelter transaction. The likely recordkeepers are taxable entities or individuals that participate in prohibited tax shelter transactions. The estimated number of recordkeepers is between 1,250 and 6,500. The information that is required to be collected for purposes of §301.6011(g)-1 is a subset of information that is required to be collected in order to complete and file Form 8886, “Reportable Transaction Disclosure Statement.” The estimated paperwork burden for taxpayers filling out Form 8886 is approved under OMB number 1545-1800.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays

a valid control number assigned by the Office of Management and Budget.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, returns and return information are confidential, as required by section 6103.

Background

The Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109-222 (120 Stat. 345) (TIPRA), enacted on May 17, 2006, defines certain transactions as prohibited tax shelter transactions and imposes excise taxes and disclosure requirements with respect to prohibited tax shelter transactions to which a tax-exempt entity is a party. Section 516 of TIPRA added new section 4965 and amended sections 6033(a)(2) and 6011(g) of the Code.

On July 6, 2007, the IRS and the Treasury Department published final and temporary regulations under sections 6011 and 6071 (T.D. 9334, 2007-2 C.B. 382) and temporary regulations under section 6033 (T.D. 9335, 2007-2 C.B. 380) in the **Federal Register** (72 FR 36869; 72 FR 36871). Also on July 6, 2007, the IRS and the Treasury Department issued a notice of proposed rulemaking cross-referencing those temporary regulations (REG-142039-06, 2007-2 C.B. 415; REG-139268-06, 2007-2 C.B. 715) in the **Federal Register** (72 FR 36927). This notice of proposed rulemaking also included proposed regulations under sections 4965 and 6011(g). On August 16, 2007, and August 31, 2007, the IRS and the Treasury Department issued corrections to T.D. 9334 (72 FR 45894; 72 FR 50211). On August 16, 2007, the IRS and the Treasury Department issued corrections to T.D. 9335 (72 FR 45890).

The IRS did not receive any comments or requests for a public hearing. Accordingly, the proposed regulations are adopted as final by this Treasury decision with certain revisions described below.

Explanation of Provisions

Definition of Party to a Prohibited Tax Shelter Transaction

The proposed regulations set forth a three-part definition of the term “party to a prohibited tax shelter transaction.” Under the proposed regulations, a tax-exempt entity is a party to a prohibited tax shelter transaction if it: (1) facilitates a prohibited tax shelter transaction by reason of its exempt, tax indifferent or tax-favored status; (2) enters into a listed transaction and reflects on its tax return (whether an original or an amended return) a reduction or elimination of its liability for applicable Federal employment, excise or unrelated business income taxes that is derived directly or indirectly from tax consequences or tax strategy described in the published guidance that lists the transaction; or (3) is identified in published guidance, by type, class or role, as a party to a prohibited tax shelter transaction. The final regulations eliminate the second part of this definition; therefore, a tax-exempt entity that enters into a transaction to reduce or eliminate its own tax liability generally will not be considered a party to a prohibited tax shelter transaction under these regulations. However, under the third part of the definition in the proposed regulations, which is retained in the final regulations, the IRS and the Treasury Department may identify in published guidance specific transactions or circumstances in which a tax-exempt entity that enters into a transaction to reduce or eliminate its own tax liability will be treated as a party to a prohibited tax shelter transaction for purposes of section 4965.

A variety of circumstances may arise in which an entity generally exempt from tax may nevertheless be subject to some form of Federal taxation. When such circumstances arise, some tax-exempt entities may seek ways to reduce or eliminate the Federal tax as would a similarly situated entity that is not exempt from tax. In general, exempt status does not provide additional opportunities or incentives for a tax-exempt entity to engage in a listed transaction to reduce or eliminate taxes imposed upon it. Further, a tax-exempt entity that engages in such transactions is subject to the same disclosure rules and increased penalties as other similarly

situated taxpayers (for example, sections 6011, 6707A, 6662, 6662A and 6663).

Accordingly, the IRS and the Treasury Department believe that, as a general rule, a tax-exempt entity that engages in a listed transaction to reduce or eliminate its own tax liability should not be considered a party to a prohibited tax shelter transaction for purposes of section 4965. The IRS and the Treasury Department have retained the ability to provide exceptions to this general rule through published guidance that identifies, by type, class or role, a tax-exempt entity as a party to a prohibited tax shelter transaction, including a tax-exempt entity that enters into a particular transaction to reduce or eliminate its own tax liability.

Because the IRS and the Treasury Department have eliminated the second part of the definition of the term “party,” certain other conforming changes were made to the regulations.

Timing for Disclosure by Taxable Party to Tax-Exempt Party

The proposed regulations required a taxable party to a prohibited tax shelter transaction to disclose by statement to each tax-exempt entity that the taxable party knows or has reason to know is a party to such transaction that the transaction is a prohibited tax shelter transaction. The proposed regulations required the taxable party to make the disclosure within 60 days after the last to occur of (1) the date the person becomes a taxable party to the transaction, or (2) the date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction. The proposed regulations provided an exception if the person does not know or have reason to know that the tax-exempt entity is a party to the transaction on or before the first date on which the transaction is required to be disclosed by the person under section 6011.

These final regulations modify the rule governing the timing of this disclosure. The taxable party now must make the disclosure within 60 days after the last to occur of (1) the date the person becomes a taxable party to the transaction, (2) the date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction, or (3) July 6, 2010. These final regulations retain the exception for persons who do not know or

have reason to know that a tax-exempt entity is a party to the transaction on or before the first date on which the transaction is required to be disclosed by the person under section 6011.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in §301.6011(g)–1 will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601) (RFA) is not required. The effect of these regulations on small entities flows directly from the statutes these regulations implement. Section 6011(g), as amended by TIPRA, requires any taxable party to a prohibited tax shelter transaction to notify any tax-exempt entity that is a party to such transaction that the transaction is a prohibited tax shelter transaction. In implementing this statute, §301.6011(g)–1 of the regulations requires every taxable party to a prohibited tax shelter transaction (or a single taxable party acting by designation on behalf of other taxable parties) to provide to every tax-exempt entity that the taxable party knows or has reason to know is a party to the transaction a single statement disclosing that the transaction is a prohibited tax shelter transaction within 60 days after the last to occur of: (1) the date the taxable person becomes a taxable party to the transaction; (2) the date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction; or (3) July 6, 2010. These final regulations retain the exception for persons who do not know or have reason to know that a tax-exempt entity is a party to the transaction on or before the first date on which the transaction is required to be disclosed by the person under section 6011. Moreover, it is unlikely that a significant number of small businesses will engage in transactions that are subject to disclosure under §301.6011(g).

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these 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 authors of these regulations are Benjamin Akins and Cathy Pastor, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 53, 54, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:
Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6033-5 is added to read as follows:

§1.6033-5 Disclosure by tax-exempt entities that are parties to certain reportable transactions.

(a) *In general.* Every tax-exempt entity (as defined in section 4965(c)) shall file with the IRS on Form 8886-T, “*Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction*” (or a successor form), in accordance with this section and the instructions to the form, a disclosure of—

(1) Such entity’s being a party (as defined in §53.4965-4 of this chapter) to a prohibited tax shelter transaction (as defined in section 4965(e)); and

(2) The identity of any other party (whether taxable or tax-exempt) to such transaction that is known to the tax-exempt entity.

(b) *Frequency of disclosure.* A single disclosure is required for each prohibited tax shelter transaction.

(c) *By whom disclosure is made—*(1) *Tax-exempt entities referred to in section 4965(c)(1), (2) or (3).* In the case of tax-exempt entities referred to in section

4965(c)(1), (2) or (3), the disclosure required by this section must be made by the entity.

(2) *Tax-exempt entities referred to in section 4965(c)(4), (5), (6) or (7).* In the case of tax-exempt entities referred to in section 4965(c)(4), (5), (6) or (7), including a fully self-directed qualified plan, IRA, or other savings arrangement, the disclosure required by this section must be made by the entity manager (as defined in section 4965(d)(2)) of the entity.

(d) *Time and place for filing—*(1) *In general.* The disclosure required by this section shall be filed on or before May 15 of the calendar year following the close of the calendar year during which the tax-exempt entity entered into the prohibited tax shelter transaction.

(2) *Subsequently listed transactions.* In the case of subsequently listed transactions (as defined in section 4965(e)(2)), the disclosure required by this section shall be filed on or before May 15 of the calendar year following the close of the calendar year during which the transaction was identified by the Secretary as a listed transaction.

(3) *Transition rule.* If a tax-exempt entity entered into a prohibited tax shelter transaction after May 17, 2006, and before January 1, 2007, the disclosure required by this section shall be filed on or before November 2, 2007.

(4) *No disclosure.* Disclosure is not required with respect to any prohibited tax shelter transaction entered into by a tax-exempt entity on or before May 17, 2006.

(e) *Penalty for failure to provide disclosure statement.* See section 6652(c)(3) for the penalty applicable to the failure to disclose a prohibited tax shelter transaction in accordance with this section.

(f) *Effective date/applicability date.* This section applies with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

§1.6033-5T [Removed].

Par. 3. Section 1.6033-5T is removed.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 4. The authority citation for part 53 continues to read, in part, as follows:

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

Par. 5. Sections 53.4965-1 through 53.4965-9 are added to subpart K to read as follows:

§53.4965-1 Overview.

(a) *Entity-level excise tax.* Section 4965 imposes two excise taxes with respect to certain tax shelter transactions to which tax-exempt entities are parties. Section 4965(a)(1) imposes an entity-level excise tax on certain tax-exempt entities that are parties to “prohibited tax shelter transactions,” as defined in section 4965(e). See §53.4965-2 for the discussion of covered tax-exempt entities. See §53.4965-3 for the definition of prohibited tax shelter transactions. See §53.4965-4 for the definition of tax-exempt party to a prohibited tax shelter transaction. The entity-level excise tax under section 4965(a)(1) is imposed on a specified percentage of the entity’s net income or proceeds that are attributable to the transaction for the relevant tax year (or a period within that tax year). The rate of tax depends on whether the entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction. See §53.4965-7(a) for the discussion of the entity-level excise tax under section 4965(a)(1). See §53.4965-6 for the discussion of “knowing or having reason to know.” See §53.4965-8 for the definition of net income and proceeds and the standard for allocating net income and proceeds that are attributable to a prohibited tax shelter transaction to various periods.

(b) *Manager-level excise tax.* Section 4965(a)(2) imposes a manager-level excise tax on “entity managers,” as defined in section 4965(d), of tax-exempt entities who approve the entity as a party (or otherwise cause the entity to be a party) to a prohibited tax shelter transaction and know or have reason to know, at the time the tax-exempt entity enters into the transaction, that the transaction is a prohibited tax shelter transaction. See §53.4965-5 for the definition of entity manager and the meaning of “approving or otherwise causing,” and §53.4965-6 for the discussion of “knowing or having reason to know.” See §53.4965-7(b) for the discussion of the manager-level excise tax under section 4965(a)(2).

(c) *Effective/applicability dates.* See §53.4965–9 for the discussion of the relevant effective and applicability dates.

§53.4965–2 *Covered tax-exempt entities.*

(a) *In general.* Under section 4965(c), the term “tax-exempt entity” refers to entities that are described in sections 501(c), 501(d), or 170(c) (other than the United States), Indian tribal governments (within the meaning of section 7701(a)(40)), and tax-qualified pension plans, individual retirement arrangements and similar tax-favored savings arrangements that are described in sections 4979(e)(1), (2) or (3), 529, 457(b), or 4973(a). The tax-exempt entities referred to in section 4965(c) are divided into two broad categories, non-plan entities and plan entities.

(b) *Non-plan entities.* Non-plan entities are—

(1) Entities described in section 501(c);
(2) Religious or apostolic associations or corporations described in section 501(d);

(3) Entities described in section 170(c), including states, possessions of the United States, the District of Columbia, political subdivisions of states and political subdivisions of possessions of the United States (but not including the United States); and

(4) Indian tribal governments within the meaning of section 7701(a)(40).

(c) *Plan entities.* Plan entities are—

(1) Entities described in section 4979(e)(1) (qualified plans under section 401(a), including qualified cash or deferred arrangements under section 401(k) (including a section 401(k) plan that allows designated Roth contributions));

(2) Entities described in section 4979(e)(2) (annuity plans described in section 403(a));

(3) Entities described in section 4979(e)(3) (annuity contracts described in section 403(b), including a section 403(b) arrangement that allows Roth contributions);

(4) Qualified tuition programs described in section 529;

(5) Eligible deferred compensation plans under section 457(b) that are maintained by a governmental employer as defined in section 457(e)(1)(A);

(6) Arrangements described in section 4973(a) which include—

(i) Individual retirement plans defined in section 408(a) and (b), including—

(A) Simplified employee pensions (SEPs) under section 408(k);

(B) Simple individual retirement accounts (SIMPLEs) under section 408(p);

(C) Deemed individual retirement accounts or annuities (IRAs) qualified under a qualified plan (deemed IRAs) under section 408(q); and

(D) Roth IRAs under section 408A.

(ii) Arrangements described in section 220(d) (Archer Medical Savings Accounts (MSAs));

(iii) Arrangements described in section 403(b)(7) (custodial accounts treated as annuity contracts);

(iv) Arrangements described in section 530 (Coverdell education savings accounts); and

(v) Arrangements described in section 223(d) (health savings accounts (HSAs)).

(d) *Effective/applicability dates.* See §53.4965–9 for the discussion of the relevant effective and applicability dates.

§53.4965–3 *Prohibited tax shelter transactions.*

(a) *In general.* Under section 4965(e), the term *prohibited tax shelter transaction* means—

(1) Listed transactions within the meaning of section 6707A(c)(2), including subsequently listed transactions described in paragraph (b) of this section; and

(2) Prohibited reportable transactions, which consist of the following reportable transactions within the meaning of section 6707A(c)(1)—

(i) Confidential transactions, as described in §1.6011–4(b)(3) of this chapter; or

(ii) Transactions with contractual protection, as described in §1.6011–4(b)(4) of this chapter.

(b) *Subsequently listed transactions.* A subsequently listed transaction for purposes of section 4965 is a transaction that is identified by the Secretary as a listed transaction after the tax-exempt entity has entered into the transaction and that was not a prohibited reportable transaction (within the meaning of section 4965(e)(1)(C) and paragraph (a)(2) of this section) at the time the entity entered into the transaction.

(c) *Cross-reference.* The determination of whether a transaction is a listed transaction or a prohibited reportable transaction for section 4965 purposes shall be made under the law applicable to section 6707A(c)(1) and (c)(2).

(d) *Effective/applicability dates.* See §53.4965–9 for the discussion of the relevant effective and applicability dates.

§53.4965–4 *Definition of tax-exempt party to a prohibited tax shelter transaction.*

(a) *In general.* For purposes of sections 4965 and 6033(a)(2), a tax-exempt entity is a party to a prohibited tax shelter transaction if the entity—

(1) Facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax indifferent or tax-favored status; or

(2) Is identified in published guidance, by type, class or role, as a party to a prohibited tax shelter transaction.

(b) Published guidance may identify which tax-exempt entities, by type, class or role, will not be treated as a party to a prohibited tax shelter transaction.

(c) *Example.* The following example illustrates the principle of paragraph (a)(1) of this section:

Example. A tax-exempt entity enters into a transaction (Transaction A) with an S corporation. Transaction A is the same as or substantially similar to the transaction identified by the Secretary as a listed transaction in Notice 2004–30, 2004–1 C.B. 828. The tax-exempt entity’s role in Transaction A is similar to the role of the tax-exempt party, as described in Notice 2004–30. Under the terms of the transaction, as described in Notice 2004–30, the tax-exempt entity receives the S corporation stock and purports to aid the S corporation and its shareholders in avoiding taxable income. The tax-exempt entity facilitates Transaction A by reason of its tax-exempt, tax indifferent or tax-favored status. Accordingly, the tax-exempt entity is a party to Transaction A for purposes of sections 4965 and 6033(a)(2). See §601.601(d)(2)(ii)(b) of this chapter.

(d) *Effective/applicability dates.* See §53.4965–9 for the discussion of the relevant effective and applicability dates.

§53.4965–5 *Entity managers and related definitions.*

(a) *Entity manager of a non-plan entity—*(1) *In general.* Under section 4965(d)(1), an *entity manager of a non-plan entity* is—

(i) A person with the authority or responsibility similar to that exercised by an

officer, director, or trustee of an organization (that is, the non-plan entity); and

(ii) With respect to any act, the person who has final authority or responsibility (either individually or as a member of a collective body) with respect to such act.

(2) *Definition of officer.* For purposes of paragraph (a)(1)(i) of this section, a person is considered to be an officer of the non-plan entity (or to have similar authority or responsibility) if the person—

(i) Is specifically designated as such under the certificate of incorporation, by-laws, or other constitutive documents of the non-plan entity; or

(ii) Regularly exercises general authority to make administrative or policy decisions on behalf of the non-plan entity.

(3) *Exception for acts requiring approval by a superior.* With respect to any act, any person is not described in paragraph (a)(2)(ii) of this section if the person has authority merely to recommend particular administrative or policy decisions, but not to implement them without approval of a superior.

(4) *Delegation of authority.* A person is an entity manager of a non-plan entity within the meaning of paragraph (a)(1)(ii) of this section if, with respect to any prohibited tax shelter transaction, such person has been delegated final authority or responsibility with respect to such transaction (including by transaction type or dollar amount) by a person described in paragraph (a)(1)(i) of this section or the governing board of the entity. For example, an investment manager is an entity manager with respect to a prohibited tax shelter transaction if the non-plan entity's governing body delegated to the investment manager the final authority to make certain investment decisions and, in the exercise of that authority, the manager committed the entity to the transaction. To be considered an entity manager of a non-plan entity within the meaning of paragraph (a)(1)(ii) of this section, a person need not be an employee of the entity. A person is not described in paragraph (a)(1)(ii) of this section if the person is merely implementing a decision made by a superior.

(b) *Entity manager of a plan entity*—(1) *In general.* Under section 4965(d)(2), an *entity manager of a plan entity* is the person who approves or otherwise causes the entity to be a party to the prohibited tax shelter transaction.

(2) *Special rule for plan participants and beneficiaries who have investment elections*—(i) *Fully self-directed plans or arrangements.* In the case of a fully self-directed qualified plan, IRA, or other savings arrangement (including a case where a plan participant or beneficiary is given a list of prohibited investments, such as collectibles), if the plan participant or beneficiary selected a certain investment and, therefore, approved the plan entity to become a party to a prohibited tax shelter transaction, the plan participant or the beneficiary is an entity manager.

(ii) *Plans or arrangements with limited investment options.* In the case of a qualified plan, IRA, or other savings arrangement where a plan participant or beneficiary is offered a limited number of investment options from which to choose, the person responsible for determining the pre-selected investment options is an entity manager and the plan participant or the beneficiary generally is not an entity manager.

(c) *Meaning of “approves or otherwise causes”*—(1) *In general.* A person is treated as approving or otherwise causing a tax-exempt entity to become a party to a prohibited tax shelter transaction if the person has the authority to commit the entity to the transaction, either individually or as a member of a collective body, and the person exercises that authority.

(2) *Collective bodies.* If a person shares the authority described in paragraph (c)(1) of this section as a member of a collective body (for example, board of trustees or committee), the person will be considered to have exercised such authority if the person voted in favor of the entity becoming a party to the transaction. However, a member of the collective body will not be treated as having exercised the authority described in paragraph (c)(1) of this section if he or she voted against a resolution that constituted approval or an act that caused the tax-exempt entity to be a party to a prohibited tax shelter transaction, abstained from voting for such approval, or otherwise failed to vote in favor of such approval.

(3) *Exceptions*—(i) *Successor in interest.* If a tax-exempt entity that is a party to a prohibited tax shelter transaction is dissolved, liquidated, or merged into a successor entity, an entity manager of the successor entity will not, solely by reason of

the reorganization, be treated as approving or otherwise causing the successor entity to become a party to a prohibited tax shelter transaction, provided that the reorganization of the tax-exempt entity does not result in a material change to the terms of the transaction. For purposes of this paragraph (c)(3)(i), a material change includes an extension or renewal of the agreement (other than an extension or renewal that results from another party to the transaction unilaterally exercising an option granted by the agreement) or a more than incidental change to any payment under the agreement. A change for the sole purpose of substituting the successor entity for the original tax-exempt party is not a material change.

(ii) *Exercise or nonexercise of options.* Nonexercise of an option pursuant to a transaction involving the tax-exempt entity generally will not constitute an act of approving or causing the entity to be a party to the transaction. If, pursuant to a transaction involving the tax-exempt entity, the entity manager exercises an option (such as a repurchase option), the entity manager will not be subject to the entity manager-level tax if the exercise of the option does not result in the tax-exempt entity becoming a party to a second transaction that is a prohibited tax shelter transaction.

(4) *Example.* The following example illustrates the principles of paragraph (c)(3)(ii) of this section:

Example. In a sale-in, lease-out (SILO) transaction described in Notice 2005-13, 2005-1 C.B. 630, X, which is a non-plan entity, has purported to sell property to Y, a taxable entity and lease it back for a term of years. At the end of the basic lease term, X has the option of “repurchasing” the property from Y for a predetermined purchase price, with funds that have been set aside at the inception of the transaction for that purpose. The entity manager, by deciding to exercise or not exercise the “repurchase” option is not approving or otherwise causing the non-plan entity to become a party to a second prohibited tax shelter transaction. See §601.601(d)(2)(ii)(b) of this chapter.

(5) *Coordination with the reason-to-know standard.* The determination that an entity manager approved or caused a tax-exempt entity to be a party to a prohibited tax shelter transaction, by itself, does not establish liability for the section 4965(a)(2) tax. For rules on determining whether an entity manager knew or had reason to know that the transaction was a prohibited tax shelter transaction, see §53.4965-6(b).

(d) *Effective/applicability dates.* See §53.4965-9 for the discussion of the relevant effective and applicability dates.

§53.4965-6 *Meaning of “knows or has reason to know”.*

(a) *Attribution to the entity.* An entity will be treated as knowing or having reason to know for section 4965 purposes if one or more of its entity managers knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity manager(s) approved the entity as (or otherwise caused the entity to be) a party to the transaction. The entity shall be attributed the knowledge or reason to know of any entity manager described in §53.4965-5(a)(1)(i) even if that entity manager does not approve the entity as (or otherwise cause the entity to be) a party to the transaction.

(b) *Determining whether an entity manager knew or had reason to know—(1) In general.* Whether an entity manager knew or had reason to know that a transaction is a prohibited tax shelter transaction is based on all facts and circumstances. In order for an entity manager to know or have reason to know that a transaction is a prohibited tax shelter transaction, the entity manager must have knowledge of sufficient facts that would lead a reasonable person to conclude that the transaction is a prohibited tax shelter transaction. An entity manager will be considered to have “reason to know” if a reasonable person in the entity manager’s circumstances would conclude that the transaction was a prohibited tax shelter transaction based on all the facts reasonably available to the manager at the time of approving the entity as (or otherwise causing the entity to be) a party to the transaction. Factors that will be considered in determining whether a reasonable person in the entity manager’s circumstances would conclude that the transaction was a prohibited tax shelter transaction include, but are not limited to—

(i) The presence of tax shelter indicia (see paragraph (b)(2) of this section);

(ii) Whether the entity manager received a disclosure statement prior to the consummation of the transaction indicating that the transaction may be a prohibited tax shelter transaction (see paragraph (b)(3) of this section); and

(iii) Whether the entity manager made appropriate inquiries into the transaction (see paragraph (b)(4) of this section).

(2) *Tax-shelter indicia.* The presence of indicia that a transaction is a tax shelter will be treated as an indication that the entity manager knew or had reason to know that the transaction was a prohibited tax shelter transaction. Tax shelter indicia include but are not limited to—

(i) The transaction is extraordinary for the entity considering prior investment activity;

(ii) The transaction promises an economic return for the organization that is exceptional considering the amount invested by, the participation of, or the absence of risk to the organization; or

(iii) The transaction is of significant size relative to the receipts of the entity.

(3) *Effect of disclosure statements.* Receipt by an entity manager of a statement, including a statement described in section 6011(g), in advance of a transaction that the transaction may be a prohibited tax shelter transaction (or a statement that a partnership, hedge fund or other investment conduit may engage in a prohibited tax shelter transaction in the future) is a factor relevant in the determination of whether the entity manager knew or had reason to know that the transaction is a prohibited transaction. However, an entity manager will not be treated as knowing or having reason to know that the transaction was a prohibited tax shelter transaction solely because the entity manager receives such a disclosure.

(4) *Appropriate inquiries.* What inquiries are appropriate will be determined from the facts and circumstances of each case. For example, if one or more tax shelter indicia are present or if an entity manager receives a disclosure statement described in paragraph (b)(3) of this section, an entity manager has a responsibility to inquire further whether the transaction is a prohibited tax shelter transaction.

(c) *Reliance on professional advice—(1) In general.* An entity manager is not required to obtain the advice of a professional tax advisor to establish that the entity manager made appropriate inquiries. Moreover, not seeking professional advice, by itself, shall not give rise to an inference that the entity manager had reason to know that a transaction is a prohibited tax shelter transaction.

(2) *Reliance on written opinion of professional tax advisor.* An entity manager may establish that he or she did not have a reason to know that a transaction was a prohibited tax shelter transaction at the time the tax-exempt entity entered into the transaction if the entity manager reasonably, and in good faith, relied on the written opinion of a professional tax advisor. Reliance on the written opinion of a professional tax advisor establishes that the entity manager did not have reason to know if, taking into account all the facts and circumstances, the reliance was reasonable and the entity manager acted in good faith. For example, the entity manager’s education, sophistication, and business experience will be relevant in determining whether the reliance was reasonable and made in good faith. In no event will an entity manager be considered to have reasonably relied in good faith on an opinion unless the requirements of this paragraph (c)(2) are satisfied. The fact that these requirements are satisfied, however, will not necessarily establish that the entity manager reasonably relied on the opinion in good faith. For example, reliance may not be reasonable or in good faith if the entity manager knew, or reasonably should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

(i) *All facts and circumstances considered.* The advice must be based upon all pertinent facts and circumstances and the law as it relates to those facts and circumstances. The requirements of this paragraph (c)(2) are not satisfied if the entity manager fails to disclose a fact that it knows, or reasonably should know, is relevant to determining whether the transaction is a prohibited tax shelter transaction.

(ii) *No unreasonable assumptions.* The advice must not be based on unreasonable factual or legal assumptions (including assumptions as to future events) and must not unreasonably rely on the representations, statements, findings, or agreements of the entity manager or any other person (including another party to the transaction or a material advisor within the meaning of sections 6111 and 6112).

(iii) *“More likely than not” opinion.* The written opinion of the professional tax advisor must apply the appropriate law to the facts and, based on this analysis, must conclude that the transaction was not a pro-

hibited tax shelter transaction at a “more likely than not” level of certainty at the time the entity manager approved the entity (or otherwise caused the entity) to be a party to the transaction.

(3) *Special rule.* An entity manager’s reliance on a written opinion of a professional tax advisor will not be considered reasonable if the advisor is, or is related to a person who is, a material advisor with respect to the transaction within the meaning of sections 6111 and 6112.

(d) *Subsequently listed transactions.* An entity manager will not be treated as knowing or having reason to know that a transaction (other than a prohibited reportable transaction as defined in section 4965(e)(1)(C) and §53.4965-3(a)(2)) is a prohibited tax shelter transaction if the entity enters into the transaction before the date on which the transaction is identified by the Secretary as a listed transaction.

(e) *Effective/applicability dates.* See §53.4965-9 for the discussion of the relevant effective and applicability dates.

§53.4965-7 Taxes on prohibited tax shelter transactions.

(a) *Entity-level taxes—(1) In general.* Entity-level excise taxes apply to non-plan entities (as defined in §53.4965-2(b)) that are parties to prohibited tax shelter transactions.

(i) *Prohibited tax shelter transactions other than subsequently listed transactions—(A) Amount of tax if the entity did not know and did not have reason to know.* If the tax-exempt entity did not know and did not have reason to know that the transaction was a prohibited tax shelter transaction at the time the entity entered into the transaction, the tax is the highest rate of tax under section 11 multiplied by the greater of—

(1) The entity’s net income with respect to the prohibited tax shelter transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year; or

(2) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction.

(B) *Amount of tax if the entity knew or had reason to know.* If the tax-exempt entity knew or had reason to know that the transaction was a prohibited tax shelter

transaction at the time the entity entered into the transaction, the tax is the greater of—

(1) 100 percent of the entity’s net income with respect to the transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year; or

(2) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction.

(ii) *Subsequently listed transactions—(A) In general.* In the case of a subsequently listed transaction (as defined in section 4965(e)(2) and §53.4965-3(b)), the tax-exempt entity’s income and proceeds attributable to the transaction are allocated between the period before the transaction became listed and the period beginning on the date the transaction became listed. See §53.4965-8 for the standard for allocating net income or proceeds to various periods. The tax for each taxable year is the highest rate of tax under section 11 multiplied by the greater of—

(1) The entity’s net income with respect to the subsequently listed transaction (after taking into account any tax imposed by Subtitle D, other than by this section, with respect to such transaction) for the taxable year that is allocable to the period beginning on the later of the date such transaction is identified by the Secretary as a listed transaction or the first day of the taxable year; or

(2) 75 percent of the proceeds received by the entity for the taxable year that are attributable to such transaction and allocable to the period beginning on the later of the date such transaction is identified by the Secretary as a listed transaction or the first day of the taxable year.

(B) *No increase in tax.* The 100 percent tax under section 4965(b)(1)(B) and §53.4965-7(a)(1)(i)(B) does not apply to any subsequently listed transaction (as defined in section 4965(e)(2) and §53.4965-3(b)) entered into by a tax-exempt entity before the date on which the transaction is identified by the Secretary as a listed transaction.

(2) *Taxable year.* The excise tax imposed under section 4965(a)(1) applies for the taxable year in which the entity becomes a party to the prohibited tax shelter transaction and any subsequent taxable year for which the entity has net income

or proceeds attributable to the transaction. A taxable year for tax-exempt entities is the calendar year or fiscal year, as applicable, depending on the basis on which the tax-exempt entity keeps its books for Federal income tax purposes. If a tax-exempt entity has not established a taxable year for Federal income tax purposes, the entity’s taxable year for the purpose of determining the amount and timing of net income and proceeds attributable to a prohibited tax shelter transaction will be deemed to be the annual period the entity uses in keeping its books and records.

(b) *Manager-level taxes—(1) Amount of tax.* If any entity manager approved or otherwise caused the tax-exempt entity to become a party to a prohibited tax shelter transaction and knew or had reason to know that the transaction was a prohibited tax shelter transaction, such entity manager is liable for the \$20,000 tax. See §53.4965-5(d) for the meaning of approved or otherwise caused. See §53.4965-6 for the meaning of knew or had reason to know.

(2) *Timing of the entity manager tax.* If a tax-exempt entity enters into a prohibited tax shelter transaction during a taxable year of an entity manager, then the entity manager that approved or otherwise caused the tax-exempt entity to become a party to the transaction is liable for the entity manager tax for that taxable year if the entity manager knew or had reason to know that the transaction was a prohibited tax shelter transaction.

(3) *Example.* The application of paragraph (b)(2) of this section is illustrated by the following example:

Example. The entity manager’s taxable year is the calendar year. On December 1, 2006, the entity manager approved or otherwise caused the tax-exempt entity to become a party to a transaction that the entity manager knew or had reason to know was a prohibited tax shelter transaction. The tax-exempt entity entered into the transaction on January 31, 2007. The entity manager is liable for the entity manager level tax for the entity manager’s 2007 taxable year, during which the tax-exempt entity entered into the prohibited tax shelter transaction.

(4) *Separate liability.* If more than one entity manager approved or caused a tax-exempt entity to become a party to a prohibited tax shelter transaction while knowing (or having reason to know) that the transaction was a prohibited tax shelter transaction, then each such entity manager is separately (that is, not jointly and sever-

ally) liable for the entity manager-level tax with respect to the transaction.

(c) *Effective/applicability dates.* See §53.4965-9 for the discussion of the relevant effective and applicability dates.

§53.4965-8 Definition of net income and proceeds and standard for allocating net income or proceeds to various periods.

(a) *In general.* For purposes of section 4965(a), the amount and the timing of the net income and proceeds attributable to the prohibited tax shelter transaction will be computed in a manner consistent with the substance of the transaction. In determining the substance of listed transactions, the IRS will look to, among other items, the listing guidance and any subsequent guidance published in the Internal Revenue Bulletin relating to the transaction.

(b) *Definition of net income and proceeds—(1) Net income.* A tax-exempt entity's net income attributable to a prohibited tax shelter transaction is its gross income derived from the transaction reduced by those deductions that are attributable to the transaction and that would be allowed by chapter 1 of the Internal Revenue Code if the tax-exempt entity were treated as a taxable entity for this purpose, and further reduced by taxes imposed by Subtitle D, other than by this section, with respect to the transaction.

(2) *Proceeds—(i) Tax-exempt entities that facilitate the transaction by reason of their tax-exempt, tax indifferent or tax-favored status.* Solely for purposes of section 4965, in the case of a tax-exempt entity that is a party to the transaction by reason of §53.4965-4(a)(1) of this chapter, the term *proceeds* means the gross amount of the tax-exempt entity's consideration for facilitating the transaction, not reduced for any costs or expenses attributable to the transaction. Published guidance with respect to a particular prohibited tax shelter transaction may designate additional amounts as proceeds from the transaction for section 4965 purposes.

(ii) *Treatment of gifts and contributions.* To the extent not otherwise included in the definition of proceeds in paragraph (b)(2)(i) of this section, any amount that is a gift or a contribution to a tax-exempt entity and is attributable to a prohibited tax shelter transaction will be treated as

proceeds for section 4965 purposes, unreduced by any associated expenses.

(c) *Allocation of net income and proceeds—(1) In general.* For purposes of section 4965(a), the net income and proceeds attributable to a prohibited tax shelter transaction must be allocated in a manner consistent with the tax-exempt entity's established method of accounting for Federal income tax purposes. If the tax-exempt entity has not established a method of accounting for Federal income tax purposes, solely for purposes of section 4965(a) the tax-exempt entity must use the cash receipts and disbursements method of accounting (cash method) provided for in section 446 of the Internal Revenue Code to determine the amount and timing of net income and proceeds attributable to a prohibited tax shelter transaction.

(2) *Special rule.* If a tax-exempt entity has established a method of accounting other than the cash method, the tax-exempt entity may nevertheless use the cash method of accounting to determine the amount of the net income and proceeds—

(i) Attributable to a prohibited tax shelter transaction entered into prior to the effective date of section 4965(a) tax and allocable to pre- and post-effective date periods; or

(ii) Attributable to a subsequently listed transaction and allocable to pre- and post-listing periods.

(d) *Transition year rules.* In the case of the taxable year that includes August 16, 2006 (the transition year), the IRS will treat the period beginning on the first day of the transition year and ending on August 15, 2006, and the period beginning on August 16, 2006, and ending on the last day of the transition year as short taxable years. This treatment is solely for purposes of allocating net income or proceeds under section 4965. The tax-exempt entity continues to file tax returns for the full taxable year, does not file tax returns with respect to these deemed short taxable years and does not otherwise take the short taxable years into account for Federal tax purposes. Accordingly, the net income or proceeds that are properly allocated to the transition year in accordance with this section will be treated as allocable to the period—

(1) Ending on or before August 15, 2006 (and accordingly not subject to tax

under section 4965(a)) to the extent such net income or proceeds would have been properly taken into account in accordance with this section by the tax-exempt entity in the deemed short year ending on August 15, 2006; and

(2) Beginning after August 15, 2006 (and accordingly subject to tax under section 4965(a)) to the extent such income or proceeds would have been properly taken into account in accordance with this section by the tax-exempt entity in the short year beginning August 16, 2006.

(e) *Allocation to pre- and post-listing periods.* If a transaction other than a prohibited reportable transaction (as defined in section 4965(e)(1)(C) and §53.4965-3(a)(2)) to which the tax-exempt entity is a party is subsequently identified in published guidance as a listed transaction during a taxable year of the entity (the listing year) in which it has net income or proceeds attributable to the transaction, the net income or proceeds are allocated between the pre- and post-listing periods. The IRS will treat the period beginning on the first day of the listing year and ending on the day immediately preceding the date of the listing, and the period beginning on the date of the listing and ending on the last day of the listing year as short taxable years. This treatment is solely for purposes of allocating net income or proceeds under section 4965. The tax-exempt entity continues to file tax returns for the full taxable year, does not file tax returns with respect to these deemed short taxable years and does not otherwise take the short taxable years into account for Federal tax purposes. Accordingly, the net income or proceeds that are properly allocated to the listing year in accordance with this section will be treated as allocable to the period—

(1) Ending before the date of the listing (and accordingly not subject to tax under section 4965(a)) to the extent such net income or proceeds would have been properly taken into account in accordance with this section by the tax-exempt entity in the deemed short year ending on the day immediately preceding the date of the listing; and

(2) Beginning on the date of the listing (and accordingly subject to tax under section 4965(a)) to the extent such income or proceeds would have been properly taken into account in accordance with this sec-

tion by the tax-exempt entity in the short year beginning on the date of the listing.

(f) *Examples.* The following examples illustrate the allocation rules of this section:

Example 1. (i) In 1999, X, a calendar year non-plan entity using the cash method of accounting, entered into a lease-in/lease-out transaction (LIFO) substantially similar to the transaction described in Notice 2000-15, 2000-1 C.B. 826 (describing Rev. Rul. 99-14, 1999-1 C.B. 835, superseded by Rev. Rul. 2002-69, 2002-2 C.B. 760). In 1999, X purported to lease property to Y pursuant to a "head lease," and Y purported to lease the property back to X pursuant to a "sublease" of a shorter term. In form, X received \$268M as an advance payment of head lease rent. Of this amount, \$200M had been, in form, financed by a nonrecourse loan obtained by Y. X deposited the \$200M with a "debt payment undertaker." This served to defease both a portion of X's rent obligation under its sublease and Y's repayment obligation under the nonrecourse loan. Of the remainder of the \$268M advance head lease rent payment, X deposited \$54M with an "equity payment undertaker." This served to defease the remainder of X's rent obligation under the sublease as well as the exercise price of X's end-of-sublease term purchase option. This amount inures to the benefit of Y and enables Y to recover its investment in the transaction and a return on that investment. In substance, the \$54M is a loan from Y to X. X retained the remaining \$14M of the advance head lease rent payment. In substance, this represents a fee for X's participation in the transaction. See §601.601(d)(2)(ii)(b) of this chapter.

(ii) According to the substance of the transaction, the head lease, sublease and nonrecourse debt will be ignored for Federal income tax purposes. Therefore, any net income or proceeds resulting from these elements of the transaction will not be considered net income or proceeds attributable to the LIFO transaction for purposes of section 4965(a). The \$54M deemed loan from Y to X and the \$14M fee are not ignored for Federal income tax purposes.

(iii) Under X's established cash basis method of accounting, any net income received in 1999 and attributable to the LIFO transaction is allocated to X's December 31, 1999, tax year for purposes of section 4965. The \$14M fee received in 1999, which constitutes proceeds of the transaction, is likewise allocated to that tax year. Because the 1999 tax year is before the effective date of the section 4965 tax, X will not be subject to any excise tax under section 4965 for the amounts received in 1999.

(iv) Any earnings on the amount deposited with the equity payment undertaker that constitute gross income to X will be reduced by X's original issue discount deductions with respect to the deemed loan from Y, in determining X's net income from the transaction.

Example 2. B, a non-plan entity using the cash method of accounting, has an annual accounting period that ends on December 31, 2006. B entered into a prohibited tax shelter transaction on March 15, 2006. On that date, B received a payment of \$600,000 as a fee for its involvement in the transaction. B received no other proceeds or income attributable to this transaction in 2006. Under B's method of accounting, the payment received by B on March 15,

2006, is taken into account in the deemed short year ending on August 15, 2006. Accordingly, solely for purposes of section 4965, the payment is treated as allocable solely to the period ending on or before August 15, 2006, and is not subject to the excise tax imposed by section 4965(a).

Example 3. The facts are the same as in *Example 2*, except that B received an additional payment of \$400,000 on September 30, 2006. Under B's method of accounting, the payment received by B on September 30, 2006, is taken into account in the deemed short year beginning on August 16, 2006. Accordingly, solely for purposes of section 4965, the \$400,000 payment is treated as allocable to the period beginning after August 15, 2006, and is subject to the excise tax imposed by section 4965(a).

Example 4. C, a non-plan entity using the cash method of accounting, has an annual accounting period that ends on December 31. C entered into a prohibited tax shelter transaction on May 1, 2005. On March 15, 2007, C received a payment of \$580,000 attributable to the transaction. On June 1, 2007, the transaction is identified by the IRS in published guidance as a listed transaction. On June 15, 2007, C received an additional payment of \$400,000 attributable to the transaction. Under C's method of accounting, the payments received on March 15, 2007, and June 15, 2007, are taken into account in 2007. The IRS will treat the period beginning on January 1, 2007, and ending on May 31, 2007, and the period beginning on June 1, 2007, and ending on December 31, 2007, as short taxable years. The payment received by C on March 15, 2007, is taken into account in the deemed short year ending on May 31, 2007. Accordingly, solely for purposes of section 4965, the payment is treated as allocable solely to the pre-listing period, and is not subject to the excise tax imposed by section 4965(a). The payment received by C on June 15, 2007, is taken into account in the deemed short year beginning on June 1, 2007. Accordingly, solely for purposes of section 4965, the payment is treated as allocable to the post-listing period, and is subject to the excise tax imposed by section 4965(a).

(g) *Effective/applicability dates.* See §53.4965-9 for the discussion of the relevant effective and applicability dates.

§53.4965-9 Effective/applicability dates.

(a) *In general.* The taxes under section 4965(a) and §53.4965-7 are effective for taxable years ending after May 17, 2006, with respect to transactions entered into before, on or after that date, except that no tax under section 4965(a) applies with respect to income or proceeds that are properly allocable to any period ending on or before August 15, 2006.

(b) *Applicability of the regulations.* As of July 6, 2010, except as provided in paragraph (c) of this section, §§53.4965-1 through 53.4965-8 of this chapter will apply to taxable years ending after July 6, 2007. A tax-exempt entity may rely on the provisions of §§53.4965-1 through

53.4965-8 for taxable years ending on or before July 6, 2007.

(c) *Effective/applicability date with respect to certain knowing transactions—(1) Entity-level tax.* The 100 percent tax under section 4965(b)(1)(B) and §53.4965-7(a)(1)(i)(B) does not apply to prohibited tax shelter transactions entered into by a tax-exempt entity on or before May 17, 2006.

(2) *Manager-level tax.* The IRS will not assert that an entity manager who approved or caused a tax-exempt entity to become a party to a prohibited tax shelter transaction is liable for the entity manager tax under section 4965(b)(2) and §53.4965-7(b)(1) with respect to the transaction if the tax-exempt entity entered into such transaction prior to May 17, 2006.

Par. 6. Section 53.6071-1, paragraphs (g) and (h) are revised to read as follows:

§53.6071-1 Time for filing returns.

* * * * *

(g) *Taxes imposed with respect to prohibited tax shelter transactions to which tax-exempt entities are parties—(1) Returns by certain tax-exempt entities.* A Form 4720, "Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code," required by §53.6011-1(b) for a tax-exempt entity described in section 4965(c)(1), (c)(2) or (c)(3) that is a party to a prohibited tax shelter transaction and is liable for tax imposed by section 4965(a)(1) shall be filed on or before the due date (not including extensions) for filing the tax-exempt entity's annual information return under section 6033(a)(1). If the tax-exempt entity is not required to file an annual information return under section 6033(a)(1), the Form 4720 shall be filed on or before the 15th day of the fifth month after the end of the tax-exempt entity's taxable year or, if the entity has not established a taxable year for Federal income tax purposes, the entity's annual accounting period.

(2) *Returns by entity managers of tax-exempt entities described in section 4965(c)(1), (c)(2) or (c)(3).* A Form 4720, required by §53.6011-1(b) for an entity manager of a tax-exempt entity described in section 4965(c)(1), (c)(2) or (c)(3) who is liable for tax imposed by section 4965(a)(2) shall be filed on or before the 15th day of the fifth month following the

close of the entity manager's taxable year during which the entity entered into the prohibited tax shelter transaction.

(3) *Transition rule.* A Form 4720, for a section 4965 tax that was due on or before October 4, 2007, will be deemed to have been filed on the due date if it was filed by October 4, 2007, and if all section 4965 taxes required to be reported on that Form 4720 were paid by October 4, 2007.

(h) *Effective/applicability date.* Paragraph (g) of this section is applicable on July 6, 2007.

§53.6071-1T [Amended].

Par. 7. Section 53.6071-1T(g) & (h) are removed.

PART 54—PENSION EXCISE TAXES

Par. 8. The authority citation for part 54 continues to read, in part, as follows:

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

Par. 9. Section 54.6011-1, paragraphs (c) and (d) are revised to read as follows:

§54.6011-1 *General requirement of return, statement or list.*

* * * * *

(c) *Entity manager tax on prohibited tax shelter transactions—(1) In general.* Any entity manager of a tax-exempt entity described in section 4965(c)(4), (c)(5), (c)(6), or (c)(7) who is liable for tax under section 4965(a)(2) shall file a return on Form 5330, "Return of Excise Taxes Related to Employee Benefit Plans," on or before the 15th day of the fifth month following the close of such entity manager's taxable year during which the entity entered into the prohibited tax shelter transaction, and shall include therein the information required by such form and the instructions issued with respect thereto.

(2) *Transition rule.* A Form 5330, "Return of Excise Taxes Related to Employee Benefit Plans," for an excise tax under section 4965 that was due on or before October 4, 2007, will be deemed to have been filed on the due date if it was filed by October 4, 2007, and if the section 4965 tax that was required to be reported on that Form 5330 was paid by October 4, 2007.

(d) *Effective/applicability date.* Paragraph (c) of this section is applicable on July 6, 2007.

§54.6011-1T [Amended].

Par. 10. Section §54.6011-1T(c) & (d) are removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 11. The authority citation for part 301 continues to read, in part, as follows:

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

Par. 12. Section 301.6011(g)-1 is added to read as follows:

§301.6011(g)-1 *Disclosure by taxable party to the tax-exempt entity.*

(a) *Requirement of disclosure—(1) In general.* Except as provided in paragraph (d)(2) of this section, any taxable party (as defined in paragraph (c) of this section) to a prohibited tax shelter transaction (as defined in section 4965(e) and §53.4965-3 of this chapter) must disclose by statement to each tax-exempt entity (as defined in section 4965(c) and §53.4965-2 of this chapter) that the taxable party knows or has reason to know is a party to such transaction (as defined in paragraph (b) of this section) that the transaction is a prohibited tax shelter transaction.

(2) *Determining whether a taxable party knows or has reason to know.* Whether a taxable party knows or has reason to know that a tax-exempt entity is a party to a prohibited tax shelter transaction is based on all the facts and circumstances. If the taxable party knows or has reason to know that a prohibited tax shelter transaction involves a tax-exempt, tax indifferent or tax-favored entity, relevant factors for determining whether the taxable party knows or has reason to know that a specific tax-exempt entity is a party to the transaction include—

(i) The extent of the efforts made to determine whether a tax-exempt entity is facilitating the transaction by reason of its tax-exempt, tax indifferent or tax-favored status (or is identified in published guidance, by type, class or role, as a party to the transaction); and

(ii) If a tax-exempt entity is facilitating the transaction by reason of its tax-exempt, tax indifferent or tax-favored status (or is identified in published guidance, by type, class or role, as a party to the transaction), the extent of the efforts made to determine the identity of the tax-exempt entity.

(b) *Definition of tax-exempt party to a prohibited tax shelter transaction.* For purposes of section 6011(g), a tax-exempt entity is a party to a prohibited tax shelter transaction if the entity is defined as such under §53.4965-4 of this chapter.

(c) *Definition of taxable party—(1) In general.* For purposes of this section, the term *taxable party* means—

(i) A person who has entered into and participates or expects to participate in the transaction under §§1.6011-4(c)(3)(i)(A), (B), or (C), 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, or 56.6011-4 of this chapter; or

(ii) A person who is designated as a taxable party by the Secretary in published guidance.

(2) *Special rules—(i) Certain listed transactions.* If a transaction that was otherwise not a prohibited tax shelter transaction becomes a listed transaction after the filing of a person's tax return (including an amended return) reflecting either tax consequences or a tax strategy described in the published guidance listing the transaction (or a tax benefit derived from tax consequences or a tax strategy described in the published guidance listing the transaction), the person is a taxable party beginning on the date the transaction is described as a listed transaction in published guidance.

(ii) *Persons designated as non-parties.* Published guidance may identify which persons, by type, class or role, will not be treated as a party to a prohibited tax shelter transaction for purposes of section 6011(g).

(d) *Time for providing disclosure statement—(1) In general.* A taxable party to a prohibited tax shelter transaction must make the disclosure required by this section to each tax-exempt entity that the taxable party knows or has reason to know is a party to the transaction within 60 days after the last to occur of—

(i) The date the person becomes a taxable party to the transaction within the meaning of paragraph (c) of this section;

(ii) The date the taxable party knows or has reason to know that the tax-exempt entity is a party to the transaction within the meaning of paragraph (b) of this section; or

(iii) July 6, 2010.

(2) *Termination of a disclosure obligation.* A person shall not be required

to provide the disclosure otherwise required by this section if the person does not know or have reason to know that the tax-exempt entity is a party to the transaction within the meaning of paragraph (b) of this section on or before the first date on which the transaction is required to be disclosed by the person under §§1.6011-4, 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4, 54.6011-4, or 56.6011-4 of this chapter.

(3) Disclosure is not required with respect to any prohibited tax shelter transaction entered into by a tax-exempt entity on or before May 17, 2006.

(e) *Frequency of disclosure.* One disclosure statement is required per tax-exempt entity per transaction. See paragraph (h) of this section for rules relating to designation agreements.

(f) *Form and content of disclosure statement.* The statement disclosing to the tax-exempt entity that the transaction is a prohibited tax shelter transaction must be a written statement that—

(1) Identifies the type of prohibited tax shelter transaction (including the published guidance citation for a listed transaction); and

(2) States that the tax-exempt entity's involvement in the transaction may subject either it or its entity manager(s) or both to excise taxes under section 4965 and to disclosure obligations under section 6033(a) of the Internal Revenue Code.

(g) *To whom disclosure is made.* The disclosure statement must be provided—

(1) In the case of a non-plan entity as defined in §53.4965-2(b) of this chapter, to—

(i) Any entity manager of the tax-exempt entity with authority or responsibility similar to that exercised by an officer, director or trustee of an organization; or

(ii) If a person described in paragraph (g)(1)(i) of this section is not known, to the primary contact on the transaction.

(2) In the case of a plan entity as defined in §53.4965-2(c) of this chapter, including a fully self-directed qualified plan, IRA, or other savings arrangement, to any entity manager of the plan entity who approved or otherwise caused the entity to become a party to the prohibited tax shelter transaction.

(h) *Designation agreements.* If more than one taxable party is required to disclose a prohibited tax shelter transaction under this section, the taxable parties may designate by written agreement a single taxable party to disclose the transaction. The transaction must then be disclosed in accordance with this section. The designation of one taxable party to disclose the transaction does not relieve the other taxable parties of their obligation to disclose the transaction to a tax-exempt entity that is a party to the transaction in accordance with this section, if the designated taxable party fails to disclose the transaction to the tax-exempt entity in a timely manner.

(i) *Penalty for failure to provide disclosure statement.* See section 6707A for the penalty applicable to the failure to disclose a prohibited tax shelter transaction in accordance with this section.

(j) *Effective date/applicability date.* This section will apply with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

Par. 13. Section 301.6033-5 is added to read as follows:

§301.6033-5 Disclosure by tax-exempt entities that are parties to certain reportable transactions.

(a) *In general.* For provisions relating to the requirement of the disclosure by a tax-exempt entity that it is a party to certain reportable transactions, see §1.6033-5 of this chapter (Income Tax Regulations).

(b) *Effective date/applicability date.* This section applies with respect to transactions entered into by a tax-exempt entity after May 17, 2006.

§301.6033-5T [Removed].

Par. 14. Section 301.6033-5T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 15. The authority citation for part 602 continues to read, in part, as follows:

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

Par. 16. In §602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§602.101 OMB Control Numbers.

* * * * *
(b) * * *

CFR part or section where Identified and described	Current OMB Control No.
* * * * *	
301.6011(g)-1	1545-2079
* * * * *	

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

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

(Filed by the Office of the Federal Register on July 2, 2010, 8:45 a.m., and published in the issue of the Federal Register for July 6, 2010, 75 F.R. 38700)

Approved June 29, 2010.

Part III. Administrative, Procedural, and Miscellaneous

Alternative Amortization Schedule for Single-Employer Plans Under PRA 2010

Notice 2010-55

PURPOSE

This notice provides guidance on the availability of special funding rules for single-employer defined benefit plans under § 430(c)(2)(D) of the Internal Revenue Code (Code), as added by section 201(b)(1) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Pub. L. No. 111-192, for a plan year for which the Form 5500 (and Schedule SB) has been filed. This notice also describes anticipated future guidance that will apply for sponsors of single-employer defined benefit pension plans with respect to an election to use these special funding rules.

BACKGROUND

Section 430 specifies the minimum funding requirements that apply to single-employer defined benefit pension plans pursuant to § 412. For purposes of calculating the minimum required contribution, § 430 generally requires a plan to establish a shortfall amortization base with respect to a plan year for which the value of a plan's assets is less than the amount of the plan's funding target. Prior to amendment by PRA 2010, § 430(c)(2) provides for amortization of a shortfall amortization base over 7 years.

In lieu of the otherwise applicable amortization schedule, new § 430(c)(2)(D) permits a plan sponsor to elect for certain plan years to amortize the shortfall amortization base established for the plan year under one of two alternative amortization schedules: the "2 plus 7-year" amortization schedule; and the "15-year" amortization schedule. The 2 plus 7-year amortization schedule is described in § 430(c)(2)(D)(ii) and the 15-year amortization schedule is described in § 430(c)(2)(D)(iii). Under § 430(c)(2)(D)(iv)(II), if the plan sponsor elects to use an alternative amortization schedule for two plan years, the same amortization schedule must be used for

both plan years. Section 430(c)(7), which was added by section 201(b)(2) of PRA 2010, provides for an acceleration of the required installments under an alternative amortization schedule in the case of certain compensatory payments, dividends, and stock redemptions.

Under § 430(c)(2)(D)(v), an election to use an alternative amortization schedule may only be made with respect to one or two plan years that begin in 2008, 2009, 2010, or 2011. However, an election may be made with respect to a plan year only if the due date for the minimum required contribution to the plan for such plan year under § 430(j)(1) occurs on or after June 25, 2010 (the date of enactment of PRA 2010). For example, a plan sponsor may not elect an alternative amortization schedule for a plan year beginning on October 1, 2008 and ending September 30, 2009, because the due date for contributions for that plan year was June 15, 2010. In addition, under § 430(c)(2)(D)(iv), in the case of a plan described in section 106 of the Pension Protection Act of 2006 (PPA '06), Pub. L. No. 109-280, the only plan year for which an election permissibly may be made is the plan year beginning in 2011.

Section 430(c)(2)(D)(iv)(III) provides that a plan sponsor's election under § 430(c)(2)(D) is to be made at such time and in such form and manner as is prescribed by the Secretary of the Treasury. Section 430(c)(2)(D)(iv)(III) provides further that any such election may be revoked only with the consent of the Secretary, after taking into account any comments from the Pension Benefit Guaranty Corporation (PBGC).

Pursuant to § 430(c)(2)(D)(vi), a plan sponsor that makes an election under § 430(c)(2)(D) for a plan year is required to give notice of the election to participants and beneficiaries of the plan and is also required to inform the PBGC of such election (in such form and manner as the Director of the PBGC may prescribe).

Section 202(a) of PRA 2010 amends Title I of PPA '06 to allow a plan sponsor of a plan described in sections 104 through 106 of PPA '06 to elect, for certain plan years, one of two alternative amortization schedules with respect to a portion of the

plan's unfunded new liability. The schedules, set forth in sections 107(b) and 107(c) of PPA '06, as amended by PRA 2010, are generally similar to the 2 plus 7-year schedule and the 15-year schedule.

Section 303(c)(2) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), is parallel to § 430(c)(2) of the Code and section 201(a)(1) of PRA 2010 amends section 303(c)(2) of ERISA in a manner parallel to the amendments made to § 430(c)(2) of the Code by section 201(b)(1) of PRA 2010. Section 201(a)(2) of PRA 2010 adds section 303(c)(7) of ERISA, which is parallel to new section 430(c)(7) of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of Treasury has interpretive jurisdiction over the subject matter of this notice for purposes of ERISA as well as the Code. Thus, this notice applies for both purposes.

ELECTIONS BY PLAN SPONSOR

The Service anticipates issuing future guidance on the special funding rules under PRA 2010 for single-employer plans which may include guidance on (1) calculation of the alternative amortization schedules permitted under PRA 2010 (and the effect on funding balances), (2) the rules relating to installment acceleration amounts under § 430(c)(7), (3) the procedures for making the election to use an alternative amortization schedule, and (4) the notice requirements of § 430(c)(2)(D)(vi). In the case of a plan year that ends before the guidance is issued, the plan sponsor will be permitted to elect to use an alternative amortization schedule under PRA 2010 without regard to whether the Form 5500 (and Schedule SB) has been filed for that plan year. For example, the sponsor of a plan with a calendar year plan year will not be precluded from making the election for 2009 merely because the Form 5500 for that plan year has been filed for that plan year. Accordingly, such a plan sponsor should file the Form 5500 (and Schedule SB) in accordance with the applicable deadline, taking into account the rules for obtaining an extension. The future guidance will address reporting requirements if the plan's

Form 5500 (and Schedule SB) for the plan year has been filed.

DRAFTING INFORMATION

The principal author of this notice is Carolyn Zimmerman of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this notice may be sent via e-mail to RetirementPlanQuestions@irs.gov.

Special Funding Rules for Multiemployer Plans Under PRA 2010

Notice 2010-56

PURPOSE

This notice provides guidance on the availability of special funding rules for multiemployer defined benefit plans under § 431(b)(8) of the Internal Revenue Code (Code), as added by section 211(a)(2) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Pub. L. No. 111-192, for a plan year for which the Form 5500 (and Schedule MB) has been filed. This notice also describes anticipated future guidance that will apply for sponsors of multiemployer defined benefit pension plans with respect to the special funding rules under § 431(b)(8).

BACKGROUND

Section 431 specifies the minimum funding requirements that apply to multiemployer defined benefit pension plans pursuant to § 412. Section 431(b)(2)(B)(iii) provides for a 15-year amortization of net experience loss with respect to a plan. New section 431(b)(8)(A) provides a special amortization rule for certain net investment losses in the case of a multiemployer plan that meets a solvency test. The special rule applies to the portion of the plan's experience loss or gain attributable to net investment losses (if any) incurred in either or both of the first two plan years ending after August 31, 2008 (an applicable plan year). This portion is amortized over the period beginning with the plan year in which it is first recognized in the actuarial value of assets and ending with the last plan year

in the 30-plan-year period beginning with the plan year in which the net investment loss was incurred.

Section 431(b)(8)(B) provides a special asset valuation rule in the case of a multiemployer plan that meets the solvency test. The special rule permits a multiemployer plan to change its asset valuation method in a manner that (1) spreads the difference between expected returns and actual returns for either or both of the applicable plan years over a period of not more than 10 years, (2) provides that, for either or both of the first two plan years beginning after August 31, 2008, the value of plan assets at any time cannot be less than 80 percent or greater than 130 percent of the fair market value of the assets at that time, or (3) provides for both (1) and (2).

Section 431(b)(8)(C) describes the solvency test that a multiemployer plan must meet in order for either or both of the special funding rules to apply. The solvency test is met only if the plan actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account the changes in the funding standard account under § 431(b)(8).

In addition, under § 431(b)(8)(D), if either or both of the special funding rules apply for any plan year, a special restriction on benefit increases applies in addition to any other applicable restrictions on benefit increases. Under the special restriction, a plan amendment increasing benefits may not go into effect during either of the two plan years immediately following a plan year for which the special funding rules apply unless (1) the plan actuary certifies that the increase is paid for out of additional contributions not allocated to the plan immediately before the application to the plan of the special amortization rule for certain net investment losses or the special asset valuation rule and the plan's funded percentage and projected credit balances for the two plan years are reasonably expected to be at least as high as they would have been if the benefit increase had not been adopted, or (2) the amendment is required as a condition of qualification under the Code or to comply with other applicable law.

Under § 431(b)(8)(E), the plan sponsor of a multiemployer plan to which either or both of the special funding rules ap-

ply must give notice thereof to plan participants and beneficiaries. In addition, the plan sponsor must inform the Pension Benefit Guaranty Corporation (PBGC) that the special funding rules apply in such form and manner as the Director of the PBGC may prescribe.

Under section 211(b) of PRA 2010, § 431(b)(8) takes effect as of the first day of the first plan year ending after August 31, 2008. However, if the application of the special funding rules affects the plan's funding standard account for the first plan year beginning after August 31, 2008, the special rules are disregarded for purposes of applying § 432 and section 305 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) (relating to multiemployer plans in endangered or critical status). In addition, the restriction on plan amendments under § 431(b)(8)(D) is effective on June 25, 2010, the date of the enactment of PRA 2010.

Section 304(b)(8) of ERISA, which was added by section 211(a)(1) of PRA 2010, is parallel to § 431(b)(8) of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of Treasury has interpretive jurisdiction over the subject matter of this notice for purposes of ERISA as well as the Code. Thus, this notice applies to the provisions of section 304(b)(8) of ERISA as well as § 431(b)(8) of the Code.

ANTICIPATED FUTURE GUIDANCE AND APPLICATION OF SPECIAL RULES

The Service anticipates issuing future guidance on the special funding rules under PRA 2010 for multiemployer plans which may include guidance on (1) determination of the portion of the experience loss or gain attributable to net investment losses incurred in either or both of the first two plan years ending after August 31, 2008, (2) the requirement under § 431(b)(8)(E) to notify participants and beneficiaries of application of the special rules, and (3) the effect of application of the special rules on the certification of a multiemployer plan's status (*i.e.*, endangered, critical or neither) under § 432(b), including certifications already made.

In the case of an applicable plan year that ends before guidance under

§ 431(b)(8) is issued, the special rules may be applied for the applicable plan year (subject to the requirements of § 431(b)(8), including the restriction on plan amendments under § 431(b)(8)(D)) without regard to whether the plan sponsor has filed the Form 5500 (and Schedule MB) for that plan year. For example, the sponsor of a multiemployer plan with a calendar year plan year will not be precluded from applying the special rules to the plan for 2009 (subject to the requirements of § 431(b)(8),

including the restriction on plan amendments under § 431(b)(8)(D)) merely because the Form 5500 (and Schedule MB) for 2009 has been filed for that plan year. Accordingly, such a plan sponsor should file the Form 5500 (and Schedule MB) in accordance with the applicable deadline, taking into account the rules for obtaining an extension. The Service anticipates issuing future guidance on reporting requirements if the special rules are applied for a plan year after the plan's Form 5500

(and Schedule MB) for the plan year has been filed.

DRAFTING INFORMATION

The principal author of this notice is Yaguo Zhang of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this notice may be sent via e-mail to *RetirementPlanQuestions@irs.gov*.

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

User Fees Relating to Enrollment and Preparer Tax Identification Numbers

REG-139343-08

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed amendments to the regulations relating to the imposition of certain user fees on certain tax practitioners. The proposed regulations establish a new user fee for individuals who apply for or renew a preparer tax identification number (PTIN). The proposed regulations affect individuals who apply for or renew a PTIN. The charging of user fees is authorized by the Independent Offices Appropriations Act of 1952.

DATES: Written or electronic comments must be received by August 23, 2010. Outlines of topics to be discussed at the public hearing scheduled for Tuesday, August 24, 2010, at 10 a.m. must be received by Monday, August 23, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-139343-08), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-139343-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C., or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-139343-08). The public hearing will be held in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed

regulations, Emily M. Lesniak at (202) 622-4940; concerning cost methodology, Eva J. Williams at (202) 435-5514; concerning submission of comments, the public hearing, or to be placed on the building access list to attend the public hearing, Richard A. Hurst at Richard.A.Hurst@irs.counsel.treas.gov or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. Pursuant to section 330 of title 31, the Secretary has published regulations governing practice before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). Circular 230 is administered by the IRS Office of Professional Responsibility (OPR).

User Fee for PTINs

Section 6109 of the Internal Revenue Code (Code) authorizes the Secretary to prescribe regulations for the inclusion of a tax return preparer's identifying number on a return, statement, or other document required to be filed with the IRS. Section 6109(c) further authorizes the Secretary "to require such information as may be necessary to assign an identifying number to any person." As currently prescribed in regulations, the identifying number of a tax return preparer who is an individual is the tax return preparer's social security number (SSN) or alternative number as prescribed by the IRS.

Proposed regulations under section 6109 (REG-134235-08, 2010-16 I.R.B. 596) were published in the **Federal Register** (75 FR 14539) on March 26, 2010, and provide that, for returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's PTIN or such other number prescribed by the IRS in forms, instructions, or other appropriate guidance. The proposed regulations under section 6109 require a tax return preparer who prepares all or substantially all of

a return or claim for refund of tax after December 31, 2010 to have a PTIN. The proposed regulations also state that the IRS will provide through other guidance (including forms and instructions) guidance regarding how to apply for a PTIN or other prescribed preparer identifying number, for the regular renewal of a PTIN or other prescribed preparer identifying number, and for the payment of a user fee. Only attorneys, certified public accountants, enrolled agents, and registered tax return preparers will be eligible to apply for a PTIN. The requirements to become a registered tax return preparer will be provided in future Circular 230 guidance.

A third party vendor will administer the PTIN application and renewal process and will charge a reasonable fee that is independent of the user fee charged by the government. The vendor will develop a web-based database that individuals will use to apply for or renew a PTIN and will process paper PTIN applications. The database also will be used for applications to become registered tax return preparers, to renew the registered tax return preparers' status, to self-certify continuing professional education credits for registered tax return preparers, and to pay applicable user fees.

Proposed §300.9 establishes a \$50 user fee to apply for or renew a PTIN. The \$50 user fee is based on an annual PTIN renewal period, and the procedures for renewing a PTIN will be provided in other guidance, including forms and instructions. The user fee is nonrefundable regardless of whether the applicant receives a PTIN.

PTINs were previously issued to tax return preparers solely for the convenience of the tax return preparers, providing an alternative to using the tax return preparers' social security numbers. Requiring registration through the use of PTINs will enable the IRS to better collect and track data on tax return preparers. This data will allow the IRS to track the number of persons who prepare returns, track the qualifications of those who prepare returns, track the number of returns each person prepares, and more easily locate and review returns prepared by a tax return pre-

parer when instances of misconduct are detected.

The user fee to apply for or renew a PTIN recovers the costs that the government incurs to administer the PTIN application process. These costs include the development and maintenance of the IRS information technology system that interfaces with the vendor and the development and maintenance of internal applications that will have the capacity to process and administer the anticipated increase in applications for a PTIN. It is anticipated that the number of individuals requesting PTINs will increase to as many as 1.2 million individuals, and all individuals who receive PTINs will be required to renew their PTINs. The anticipated increase in demand for PTINs will require the IRS to expend more resources. The user fee will recover the cost of IRS customer service support activities, which include website development and maintenance and call center staffing to respond to questions regarding PTIN usage and renewal. The user fee also will recover costs for personnel, administrative, and management support needed to evaluate and address tax compliance issues of individuals applying for and renewing a PTIN, to investigate and address conduct and suitability issues, and otherwise support and enforce the programs that require an individual to apply for and renew a PTIN.

The IRS currently issues PTINs to tax return preparers without charging a user fee. The PTIN application, issuance, and renewal process, however, will become significantly more expansive and intricate with the implementation of the registered tax return preparer program. Federal tax compliance checks will be performed on all individuals who apply for or renew a PTIN. Suitability checks will be performed. The IRS will further investigate individuals when the compliance or suitability check suggests that the individual may be unfit to practice before the IRS. These checks were not previously performed as a prerequisite to obtaining a PTIN.

Additionally, the IRS will establish and implement a reconsideration process for individuals who apply to become a registered tax return preparer and are denied a PTIN upon initial application or renewal. The IRS will incur costs to apply existing Circular 230 procedures when those indi-

viduals who are certified public accountants, attorneys, enrolled agents, or registered tax return preparers are denied renewal of a PTIN.

Coordination With Other User Fees

Additional user fees related to the programs for regulating enrolled agents, enrolled retirement plan agents, and registered tax return preparers will be established in future regulations as those programs are implemented. These future regulations will address user fees associated with taking the registered tax return preparer examination and providing continuing education programs. The user fee for taking a registered tax return preparer examination will recover the costs to the government for creating, administering, and reviewing the examination. The user fee for providing continuing education programs will recover the costs to the government for the review, approval, and oversight of continuing education providers to ensure their compliance with program requirements for continuing education programs. The vendor also will charge a reasonable fee to take the registered tax return preparer examination.

Future regulations also will coordinate the enrollment and renewal user fees imposed on enrolled agents and enrolled retirement plan agents with the PTIN user fees because the costs to the government to process an enrollment application are substantially the same as the costs to the government to process a PTIN application. For example, the IRS generally may conduct only a single background check and compliance check for an individual who applies to become an enrolled agent and applies to obtain a PTIN, and therefore the enrollment application fee and the PTIN application fee must be coordinated to prevent the collection of excessive fees. It is currently anticipated that future regulations will require enrolled agents to obtain a PTIN and pay the associated application or renewal fee, in which case the enrollment and renewal fees for enrolled agents will be substantially reduced.

Effective/Applicability Dates

These regulations reorganize the effective dates for the user fees found in Treasury Regulations part 300. Currently, all of the user fee effective dates are contained in

§300.0 paragraph (c). This reorganization relocates the effective date sections to the appropriate regulation implementing each user fee. This relocation will simplify the process for updating the effective dates as the user fee regulations are revised.

Authority

The charging of user fees is authorized by the Independent Offices Appropriations Act (IOAA) of 1952, which is codified at 31 U.S.C. 9701. The IOAA authorizes agencies to prescribe regulations that establish charges for services provided by the agency. The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are currently set forth in the Office of Management and Budget Circular A-25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services. In general, a user fee should be set at an amount that allows the agency to recover the full cost of providing the special service, unless the Office of Management and Budget grants an exception.

Pursuant to the guidelines in the OMB Circular, the IRS has calculated its cost of providing services under the PTIN application and renewal process. The government will charge the full cost of administering these programs and will implement the proposed user fees under the authority of the IOAA and the OMB Circular.

Proposed Effective/Applicability Date

The Administrative Procedure Act provides that substantive rules will not be effective until thirty days after the final regulations are published in the **Federal Register** (5 U.S.C. 553(d)). Final regulations may be effective prior to thirty days after publication if the publishing agency finds

that there is good cause for an earlier effective date.

The IRS is implementing the recommendations in Publication 4832, “Return Preparer Review”, which was published on January 4, 2010, to be effective for the 2011 Federal tax filing season (January-April 2011). The IRS and the Treasury Department find that there is good cause for these regulations to be effective upon the publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is a significant regulatory action as defined in Executive Order 12866.

It has been determined that an initial regulatory flexibility analysis is required for this notice of proposed rulemaking under 5 U.S.C. 603. This analysis is set forth under the heading “Initial Regulatory Flexibility Analysis.”

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency “to prepare and make available for public comment an initial regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities.” See 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small non-profit organization, or small governmental jurisdiction. See 5 U.S.C. 601(3) through (6). The IRS and the Treasury Department conclude that the proposed rule, if promulgated, will have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is required.

Description of the reasons why action by the agency is being considered

The IRS and the Treasury Department are implementing regulatory changes that increase the oversight of the tax return preparer industry based upon findings and recommendations made by the IRS in Publication 4832, “Return Preparer Review,” which was published on January 4, 2010. These regulatory changes include implementing a registered tax return preparer program and requiring all individuals who prepare all or substantially all of a tax return or claim for refund to use a PTIN as an identifying number. Except as provided in any transitional period, only attorneys, certified public accountants, enrolled agents, or registered tax return preparers may apply for a PTIN. Thus, only attorneys, certified public accountants, enrolled agents, and registered tax return preparers will be eligible to prepare all or substantially all of a tax return or claim for refund. By limiting the individuals who may prepare all or substantially all of a tax return or claim for refund to individuals who have a PTIN, the IRS is providing a special benefit to the individuals who obtain a PTIN. There are costs to the IRS that are associated with processing a PTIN application and providing the special benefits associated with the PTIN.

Future regulations will establish additional user fees related to the enrolled agent and enrolled retirement plan agent program, and registered tax return preparer program. The additional user fees will recover the costs to the government that result from providing the special benefits associated with taking the registered tax return preparer examination and providing continuing education programs. The cost to the government for administering and reviewing the registered tax return preparer examination will be recovered in a user fee for taking the registered tax return preparer examination. The cost to the government to verify compliance with requirements for continuing education programs will be recovered in a user fee for qualifying continuing education programs. Each continuing education provider may charge a fee to attend a qualified continuing education program. The third party vendor also will charge a reasonable fee to take a registered tax return preparer examination.

A succinct statement of the objectives of, and legal basis for, the proposed rule

The objective of the proposed regulations is to recover the costs to the government associated with providing the special benefits that an individual receives upon applying for or renewing a PTIN. These costs include the development and maintenance of the IRS information technology system that interfaces with the vendor; the development and maintenance of internal applications; IRS customer service support activities, which include development and maintenance of an IRS website and call center staffing; and personnel, administrative, and management support needed to evaluate and address tax compliance issues, investigate and address conduct and suitability issues, and otherwise support and enforce the programs that require individuals to apply for or renew a PTIN. The OMB Circular encourages user fees when special benefits are conferred on identifiable recipients. Individuals who obtain a PTIN receive the ability to prepare all or substantially all of a tax return or claim for refund. The ability to prepare all or substantially all of a tax return or claim for refund is a special benefit.

The legal basis for these requirements is contained in section 9701 of title 31.

A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply

The proposed regulations affect all individuals who want to become a registered tax return preparer under the new oversight rules in Circular 230. Only individuals, not businesses, can practice before the IRS or become a registered tax return preparer. Thus, the economic impact of these regulations on any small entity generally will be a result of applicants and registered tax return preparers owning a small business or a small entity employing applicants or registered tax return preparers.

The proposed regulations further affect all individual tax return preparers who are required to apply for or renew a PTIN. Only individuals, not businesses, can apply for or renew a PTIN. Thus, the economic impact of these regulations on any small entity generally will be a result of an individual tax return preparer who is required to apply for or renew a PTIN own-

ing a small business or a small business otherwise employing an individual tax return preparer who is required to apply for or renew a PTIN to prepare all or substantially all of a tax return or claim for refund.

The appropriate NAICS codes for the registered tax return preparer program and PTINs are those that relate to tax preparation services (NAICS code 541213), other accounting services (NAICS code 541219), offices of lawyers (NAICS code 541110), and offices of certified public accountants (NAICS code 541211). Entities identified as tax preparation services and offices of lawyers are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than \$7 million. Entities identified as other accounting services and offices of certified public accountants are considered small under the Small Business Administration size standards if their annual revenue is less than \$8.5 million. The IRS estimates that approximately 70 to 80 percent of the individuals subject to these proposed regulations are tax return preparers operating as or employed by small entities.

A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record

No reporting or recordkeeping requirements are projected to be associated with this proposed regulation.

An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule

The IRS is not aware of any Federal rules that duplicate, overlap, or conflict with the proposed rule.

A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize

any significant economic impact of the proposed rule on small entities

The IOAA authorizes the charging of user fees for agency services, subject to policies designated by the President. The OMB Circular implements presidential policies regarding user fees and encourages user fees when a government agency provides a special benefit to a member of the public. As Congress has not appropriated funds to the registered tax return preparer program or PTIN application process, there are no viable alternatives to the imposition of user fees.

While the IRS previously issued PTINs to tax return preparers without charging a user fee, the registered tax return preparer program and the issuance of the new regulations under section 6109 will increase the number of PTIN applications to as many as 1.2 million applications and significantly increase the intricacy of the application process. Additionally, PTINs were previously issued solely for the convenience of tax return preparers to provide an alternative to using the tax return preparers' social security numbers as an identifying number on prepared returns. PTINs will now be used to collect and track data on tax return preparers. This data will provide important benefits to the IRS, such as allowing the IRS to track the number of persons who prepare returns, track the qualifications of those persons who prepare returns, track the number of returns each person prepares, and, when instances of misconduct are detected, locate and review returns prepared by a specific tax return preparer.

This anticipated increase in PTIN applications and the revised purpose of a PTIN will require the IRS to develop and maintain a website and train call center staff to respond to PTIN-related questions. Further, the IRS will now perform Federal tax compliance checks and perform suitability checks prior to the issuance of a PTIN. Previously, neither of these checks was performed before a PTIN was issued. When the initial compliance and suitability checks suggest that the individual applying for a PTIN may not be fit to practice before the IRS, the IRS will conduct an investigation. For individuals who are found unfit to receive a PTIN, the IRS will develop and implement a reconsideration process. Similarly, the IRS will provide

due process procedures for those individuals who are certified public accountants, attorneys, enrolled agents, or registered tax return preparers and are denied renewal of their PTIN.

Thus, due to the increased costs to the government to process the application for a PTIN, the anticipated increase in PTIN applications, and the lack of appropriated funds, there is no viable alternative to imposing a user fee.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments that are submitted by the public will be made available for public inspection and copying.

A public hearing has been scheduled for Tuesday, August 24, 2010, beginning at 10:00 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the FOR FURTHER INFORMATION CONTACT section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by Monday, August 23, 2010. A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Emily M. Lesniak, Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Proposed Amendments to the Regulations

Paragraph 1. The authority citation for part 300 continues to read in part as follows:

Authority: 31 U.S.C. 9701.

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

Par. 2. Section 300.0 is amended by

1. Adding paragraph (b)(9).

2. Removing paragraph (c).

The additions read as follows:

§300.0 User fees; in general.

* * * * *

(b) * * *

(9) Applying for a preparer tax identification number.

Par. 3. Section 300.1 is amended by adding paragraph (d) to read as follows:

§300.1 Installment agreement fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning March 16, 1995, except that the user fee for entering into installment agreements on or after January 1, 2007, is applicable January 1, 2007.

Par. 4. Section 300.2 is amended by adding paragraph (d) to read as follows:

§300.2 Restructuring or reinstatement of installment agreement fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning March 16, 1995, except that the user fee for restructuring or reinstatement of an installment agreement on or after January 1, 2007, is applicable January 1, 2007.

Par. 5. Section 300.3 is amended by adding paragraph (d) to read as follows:

§300.3 Offer to compromise fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning November 1, 2003.

Par. 6. Section 300.4 is amended by adding paragraph (d) to read as follows:

§300.4 Special enrollment examination fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning November 6, 2006.

Par. 7. Section 300.5 is amended by adding paragraph (d) to read as follows:

§300.5 Enrollment of enrolled agent fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning November 6, 2006.

Par. 8. Section 300.6 is amended by adding paragraph (d) to read as follows:

§300.6 Renewal of enrollment of enrolled agent fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning November 6, 2006.

Par. 9. Section 300.7 is amended by adding paragraph (d) to read as follows:

§300.7 Enrollment of enrolled actuary fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning January 22, 2008.

Par. 10. Section 300.8 is amended by adding paragraph (d) to read as follows:

§300.8 Renewal of enrollment of enrolled actuary fee.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning January 22, 2008.

Par. 11. Section 300.9 is added to read as follows:

§300.9 Fee for obtaining a preparer tax identification number.

(a) *Applicability.* This section applies to the application for and renewal of a preparer tax identification number pursuant to 26 CFR 1.6109-2(d).

(b) *Fee.* The fee to apply for or renew a preparer tax identification number is \$50 per year, which is the cost to the government for processing the application for a preparer tax identification number and does not include any fees charged by the vendor.

(c) *Person liable for the fee.* The individual liable for the application or renewal fee is the individual applying for and renewing a preparer tax identification number from the IRS.

(d) *Effective/applicability date.* This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

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

(Filed by the Office of the Federal Register on July 21, 2010, 4:15 p.m., and published in the issue of the Federal Register for July 23, 2010, 75 FR. 43110)

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

Announcement 2010-50

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains correcting amendments to IRS' regulations providing guidance regarding the treatment of prepaid income under the built-in gain provisions of section 382(h). These errors were made when the agency published final regulations (T.D. 9487, 2010-28 I.R.B. 48) in the **Federal Register** on Wednesday, June 16, 2010 (75 FR 33990).

DATES: This correction is effective on July 28, 2010, and is applicable on June 16, 2010.

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

Background

The final regulations (T.D. 9487) that are the subject of this document are under section 382 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (T.D. 9487) contain errors that may prove to be misleading and are in need of clarification.

* * * * *

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

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

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

Par. 2. Section 1.382-2T is amended by revising the headings of paragraph (h)(4)(vii)(A) and paragraph (h)(4)(x)(J) to read as follows:

§1.382-2T Definition of ownership change under section 382, as amended by the tax Reform Act of 1986 (temporary).

* * * * *

(h) * * *

(4) * * *

(vii) * * *

(A) Right or obligation to issue stock.

* * * * *

(x) * * *

(J) Title 11 or similar case.

* * * * *

LaNita Van Dyke,
*Chief, Publications and
 Regulations Branch,
 Legal Processing Division,
 Associate Chief Counsel
 (Procedure and Administration).*

(Filed by the Office of the Federal Register on July 27, 2010, 8:45 a.m., and published in the issue of the Federal Register for July 28, 2010, 75 FR. 44138)

Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

Announcement 2010-51

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

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

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

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

Censured in practice before the IRS—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility

to represent taxpayers before the IRS, but OPR may subject the individual's future representations to conditions designed to promote high standards of conduct.

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

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

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

Disciplinary sanctions are described in these terms:

Disbarred by decision after hearing, Suspended by decision after hearing,

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

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

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

issued a decision imposing one of these sanctions.

Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual’s opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current eligibility to practice (*i.e.*, an active professional license or active enrollment status). An

enrolled agent or an enrolled retirement plan agent may also offer to resign in order to avoid a disciplinary proceeding.

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

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary’s delegate on appeal has issued a decision on or after September 26, 2007, which was the effective date of amendments to the regulations that permit making such decisions publicly available; (2) the individual

has settled a disciplinary case by signing OPR’s “consent to sanction” form, which requires consenting individuals to admit to one or more violations of the regulations and to consent to the disclosure of the individual’s own return information related to the admitted violations (for example, failure to file Federal income tax returns); or (3) OPR has issued a decision in an expedited proceeding for suspension.

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

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Alabama				
Decatur	Hall, III, Garland C.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from June 18, 2010
Arizona				
Mesa	Goodmansen, Allen P.	CPA	Suspended by default decision in expedited proceeding under §10.82 (suspension of CPA license)	Indefinite from June 18, 2010
California				
San Bernardino	Collins, Richard S.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from June 7, 2010
Carson	Staten, Jacqueline.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from June 7, 2010

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Florida				
Marianna	Johnston, Evelyn	Enrolled Agent	Suspended by decision in expedited proceeding under §10.82 (preliminarily enjoined by U.S. district court from preparing any federal tax returns related to claims for original issue discount (OID) income, withholding, or refund claims, providing advice or services of any kind pertaining to claims for OID income, withholding, or refund claims; from ignoring the implications of questionable or suspicious information provided by customers as prohibited by Treas. Reg. 1.6694-1(e), Circular 230, and 26 U.S.C. 6694(a); and from other tax-related activities)	Indefinite from June 23, 2010
Illinois				
Moline	Koenig, Phillip E.	Attorney	Suspended by decision on appeal for violation of § 10.51 (failure to file individual income tax returns for five years and failure to pay/timely pay individual income taxes for five years)	Indefinite from May 26, 2010, but at least 48 months
Iowa				
Bettendorf	Simmons, Neil A.	Enrolled Agent	Censured by consent for admitted violations of § 10.51 (failure to pay sufficient estimated taxes on his self-employment for seven years)	June 21, 2010

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Kansas				
Garden City	McCall, Michael W.	Attorney	Suspended by consent for admitted violations of § 10.22 (1994) (in that practitioner did not exercise due diligence in regard to a municipal finance bond transaction where purported Federal tax-exempt interest on the issued bonds was later determined by the IRS to be not exempt from Federal taxation); and § 10.51(j) (1994)/10.51(a)(13) (2008) (in that practitioner rendered written advice including false opinions, knowingly, recklessly, or through gross negligence in regard to a municipal finance bond transaction where purported Federal tax-exempt interest on the issued bonds was later determined by the IRS to be not exempt from Federal taxation)	Indefinite from May 10, 2010
Arkansas City	Parman, Jon P.	CPA		Reinstated July 27, 2009
Louisiana				
Lake Charles	Judice, Gregory V.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from June 10, 2010
Massachusetts				
South Deerfield	Pepyne, Jr., Edward W.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from June 10, 2010
Needham	Spector, David L.	Attorney	Suspended by decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from June 10, 2010

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Mississippi				
Richton	Hinton, Angelia P.	CPA	Suspended by default decision in expedited proceeding under § 10.82 (revocation of CPA license in Oklahoma)	Indefinite from June 21, 2010
Nebraska				
Gothenburg	Raymond, Robert C.	CPA	Suspended by default decision in expedited proceeding under § 10.82 (revocation of CPA license)	Indefinite from June 10, 2010
New Jersey				
Elizabeth	Fishman, Mitchell E.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from June 10, 2010
Cliffside Park	Gold, Mark E.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from June 10, 2010
New York				
Hempstead	Hibner, John R.	Attorney	Suspended by decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from June 7, 2010
Copiague	McCarthy, Christopher P.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from June 10, 2010
Huntington Station	Whittlesey, JoAnn C.	CPA	Disbarred by decision on appeal for violation of § 10.51 (willful failure to timely file five Federal individual income tax returns)	Indefinite from July 18, 2008 (erroneously listed as July 18, 2009, in IRB 2009-42)

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Ohio				
Columbus	McCord, Michael	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from June 21, 2010
Wickliffe	Prince, Paul W.	CPA	Suspended by default decision in expedited proceeding under §10.82 (revocation of CPA license)	Indefinite from June 21, 2010
Canton	Schiller, Glenn M.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from June 21, 2010
Oklahoma				
Bartlesville	Shambles, Joey M.	CPA	Suspended by default decision in expedited proceeding under §10.82 (revocation of CPA license)	Indefinite from June 21, 2010
	Hinton, Angelia P., See Mississippi			
Tennessee				
Memphis	Hoots, James M.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from June 21, 2010
Texas				
Austin	Derkunt, Mustafa E.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from June 21, 2010

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.
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