

## **HIGHLIGHTS OF THIS ISSUE**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### **INCOME TAX**

#### **Rev. Rul. 2010-20, page 312.**

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate.** For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for September 2010.

#### **Rev. Proc. 2010-30, page 316.**

This procedure describes the conditions under which the Service will not challenge a mortgage loan held by a REMIC as other than a "qualified mortgage" on the grounds that the mortgage loan fails to be principally secured by an interest in real property following the release of a lien on an interest in real property that secures the mortgage loan.

### **TAX CONVENTIONS**

#### **Announcement 2010-52, page 315.**

This is a Competent Authority Agreement entered into on July 14, 2010, by the competent authorities of the United States of America and Belgium with respect to the taxation of fellowship payments made to certain researchers under the U.S.-Belgium income tax treaty and protocol.

### **ADMINISTRATIVE**

#### **Rev. Proc. 2010-32, page 320.**

This procedure provides that if a foreign entity makes a check the box election to be a partnership (under the reasonable assumption that it has more than one owner) but then determines it only had one owner, the original check the box election will be treated as an election to be a disregarded entity provided the requirements in the revenue procedure are satisfied. Similarly, it also provides that if a foreign entity makes a check the box election to be disregarded entity (under the reasonable assumption that it has only one owner) but then determines it only had more than one owner, the original check the box election will be treated as an election to be a partnership provided the requirements in the revenue procedure are satisfied.

Announcements of Disbarments and Suspensions begin on page 323.  
Finding Lists begin on page ii.



# The IRS Mission

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

force the law with integrity and fairness to all.

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

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

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

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

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

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

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

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

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

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

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

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2010. See Rev. Rul. 2010-20, page 312.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2010. See Rev. Rul. 2010-20, page 312.

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

The adjusted applicable federal long-term rate is set forth for the month of September 2010. See Rev. Rul. 2010-20, page 312.

## Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2010. See Rev. Rul. 2010-20, page 312.

## Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2010. See Rev. Rul. 2010-20, page 312.

## Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month

of September 2010. See Rev. Rul. 2010-20, page 312.

## Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2010. See Rev. Rul. 2010-20, page 312.

## Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2010. See Rev. Rul. 2010-20, page 312.

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

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2010. See Rev. Rul. 2010-20, page 312.

## Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2010. See Rev. Rul. 2010-20, page 312.

## Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2010. See Rev. Rul. 2010-20, page 312.

## Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate.** For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for September 2010.

## Rev. Rul. 2010-20

This revenue ruling provides various prescribed rates for federal income tax purposes for September 2010 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2010-20 TABLE 1

Applicable Federal Rates (AFR) for September 2010

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.46%	.46%	.46%	.46%
110% AFR	.51%	.51%	.51%	.51%
120% AFR	.55%	.55%	.55%	.55%
130% AFR	.60%	.60%	.60%	.60%
<i>Mid-term</i>				
AFR	1.94%	1.93%	1.93%	1.92%
110% AFR	2.13%	2.12%	2.11%	2.11%
120% AFR	2.33%	2.32%	2.31%	2.31%
130% AFR	2.53%	2.51%	2.50%	2.50%
150% AFR	2.92%	2.90%	2.89%	2.88%
175% AFR	3.41%	3.38%	3.37%	3.36%
<i>Long-term</i>				
AFR	3.66%	3.63%	3.61%	3.60%
110% AFR	4.03%	3.99%	3.97%	3.96%
120% AFR	4.41%	4.36%	4.34%	4.32%
130% AFR	4.78%	4.72%	4.69%	4.67%

REV. RUL. 2010-20 TABLE 2

Adjusted AFR for September 2010

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.43%	.43%	.43%	.43%
Mid-term adjusted AFR	1.62%	1.61%	1.61%	1.60%
Long-term adjusted AFR	3.86%	3.82%	3.80%	3.79%

REV. RUL. 2010-20 TABLE 3

Rates Under Section 382 for September 2010

Adjusted federal long-term rate for the current month	3.86%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	3.99%

REV. RUL. 2010-20 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for September 2010

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

Appropriate percentage for the 70% present value low-income housing credit	7.65%
Appropriate percentage for the 30% present value low-income housing credit	3.28%

REV. RUL. 2010-20 TABLE 5

Rate Under Section 7520 for September 2010

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest

2.4%

---

**Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2010. See Rev. Rul. 2010-20, page 312.

---

**Section 7520.—Valuation Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2010. See Rev. Rul. 2010-20, page 312.

---

**Section 7872.—Treatment of Loans With Below-Market Interest Rates**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2010. See Rev. Rul. 2010-20, page 312.

## Part II. Treaties and Tax Legislation

### Subpart A.—Tax Conventions and Other Related Items

#### Belgium Research Fellowship MAP Agreement

#### Announcement 2010–52

The following is a copy of the Competent Authority Agreement entered into on

July 14, 2010, by the competent authorities of the United States of America and Belgium with respect to the taxation of fellowship payments made to certain researchers under the U.S.-Belgium income tax treaty and protocol.

The text of the Competent Authority Agreement is as follows:

#### COMPETENT AUTHORITY AGREEMENT

The competent authorities of the United States and Belgium hereby enter into the following agreement (the “Agreement”) regarding the application of the Convention Between the Government of the United States of America and the Government of the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and accompanying Protocol, signed at Brussels on November 27, 2006 (the “Treaty”), to fellowship payments to certain researchers. The Agreement is entered into under paragraph 3 of Article 24 (Mutual Agreement Procedure).

It is understood that a fellowship payment to an individual who is a resident of one Contracting State (*i.e.*, the home country) for the purpose of carrying on research at an educational or research institution in the other Contracting State (*i.e.*, the host country) (a “Fellowship Payment”) may or may not be characterized as compensation, depending on the facts and circumstances.

It is agreed that if a Fellowship Payment is properly characterized as compensation under the domestic law of the host country, the Fellowship Payment is covered by paragraph 2 of Article 19 (Students, Trainees, Teachers and Researchers) of the Treaty and may be exempt from host country income tax for a period not exceeding two years if all applicable requirements are satisfied.

It also is agreed that if a Fellowship Payment is not characterized as compensation under the domestic law of the host country, the Fellowship Payment is covered by Article 20 (Other Income) of the Treaty and may be exempt from host country income tax if all applicable requirements are satisfied.

It is further agreed that paragraph 1(a)(iii) of Article 21 (Students and Trainees) of the prior U.S.-Belgium income tax treaty, signed at Brussels on July 9, 1970, as amended by a Protocol signed at Washington on December 31, 1987, applied to a Fellowship Payment without regard to whether or not the Fellowship Payment was characterized as compensation.

\_\_\_\_\_  
Michael Danilack  
United States Competent Authority  
Date: \_\_\_\_\_

\_\_\_\_\_  
Sandra Knaepen  
Belgian Competent Authority  
Date: \_\_\_\_\_

## Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.  
(Also Part I, §§ 860D, 860G, 1001; 1.860G-2, 1.1001-3.)

### Rev. Proc. 2010-30

#### SECTION 1. PURPOSE

This revenue procedure describes the circumstances under which the Internal Revenue Service (the “Service”) will not challenge a mortgage loan held by a real estate mortgage investment conduit (a “REMIC”) as other than a “qualified mortgage” on the grounds that the mortgage loan fails to be principally secured by an interest in real property for purposes of section 860G(a)(3)(A) of the Internal Revenue Code and § 1.860G-2(a)(8) of the Income Tax Regulations following a release of a lien on an interest in real property that secures the mortgage loan.

#### SECTION 2. BACKGROUND—COMMERCIAL MORTGAGE LOANS

.01 Frequently, a single commercial mortgage loan is secured by liens on multiple interests in real property.

.02 The terms of a commercial mortgage loan typically allow the borrower to obtain a release of a lien if certain conditions are satisfied. In a limited number of cases, the borrower may obtain the release of a lien at will. More often, a lien release is conditioned on a requirement that the borrower pay down the principal on the loan by a prescribed amount. If the mortgage loan is secured by multiple properties, the terms of the obligation may provide that certain properties may be sold and the sale proceeds applied to pay down the loan. In general, the payment required must be no less than the net proceeds from a sale of the property or no less than an amount that is calculated by a predetermined formula.

.03 In addition, the terms of the obligation may provide that, in the event of a casualty loss or a condemnation of all or a portion of the property, the borrower may obtain the release of the affected property

if it applies the insurance proceeds or the condemnation award to pay down the loan.

#### SECTION 3. BACKGROUND — REMICs

.01 Commercial mortgage loans are commonly pooled and held in REMICs, securitization vehicles governed by sections 860A through 860G.

.02 Section 860D(a)(4) provides, in pertinent part, that an entity qualifies as a REMIC only if, as of the close of the third month beginning after the startup day and at all times thereafter, substantially all of the entity’s assets consist of qualified mortgages and permitted investments. This asset test is satisfied if the entity owns no more than a *de minimis* amount of other assets. See § 1.860D-1(b)(3)(i). As a safe harbor, the amount of assets other than qualified mortgages and permitted investments is *de minimis* if the aggregate of the adjusted bases of those assets is less than one percent of the aggregate of the adjusted bases of all of the entity’s assets. Section 1.860D-1(b)(3)(ii).

.03 With limited exceptions, a mortgage loan is not a qualified mortgage unless it is transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC. See section 860G(a)(3)(A)(i).

.04 The legislative history of the REMIC provisions indicates that Congress intended the provisions to apply only to an entity that holds a substantially fixed pool of real estate mortgages and related assets and that “has no powers to vary the composition of its mortgage assets.” S. Rep. No. 99-313, 99<sup>th</sup> Cong., 2<sup>d</sup> Sess. 791-92, 1986-3 (Vol. 3) C.B. 791-92.

.05 Section 1.1001-3(c)(1)(i) defines a “modification” of a debt instrument as any alteration, including any deletion or addition, in whole or in part, of a legal right or obligation of the issuer or holder of a debt instrument, whether the alteration is evidenced by an express agreement (oral or written), conduct of the parties, or otherwise. Section 1.1001-3(e) governs which modifications of debt instruments are “significant.” Under § 1.1001-3(b), for most federal income tax purposes, a significant modification produces a deemed exchange

of the original debt instrument for a new debt instrument.

.06 Under § 1.860G-2(b), related rules apply to determine REMIC qualification. Except as specifically provided in § 1.860G-2(b)(3), if there is a significant modification of an obligation that is held by a REMIC, then the modified obligation is treated as one that was newly issued in exchange for the unmodified obligation that it replaced. See § 1.860G-2(b)(1). For this purpose, the rules in § 1.1001-3(e) determine whether a modification is “significant.” See § 1.860G-2(b)(2). Thus, even if an entity initially qualifies as a REMIC, one or more significant modifications of loans held by the entity may terminate the entity’s qualification if the modifications cause less than substantially all of the entity’s assets to be qualified mortgages.

.07 Certain loan modifications are not significant modifications for purposes of § 1.860G-2(b)(1), even if the modifications are significant under § 1.1001-3. Section 1.860G-2(b)(3) contains a list of modifications that are expressly permitted without regard to the section 1001 modification rules.

#### SECTION 4. BACKGROUND — PRINCIPALLY SECURED BY AN INTEREST IN REAL PROPERTY

.01 A mortgage loan is a qualified mortgage only if it is principally secured by an interest in real property. Section 860G(a)(3)(A).

.02 In general, for purposes of section 860G(a)(3)(A), an obligation is principally secured by an interest in real property only if it satisfies the “80-percent test” set forth in § 1.860G-2(a)(i). (Section 1.860G-2(a)(ii) contains an alternative test.)

.03 Under the 80-percent test, an obligation is principally secured by an interest in real property if the fair market value of the interest in real property securing the obligation—

(1) Was at least equal to 80 percent of the adjusted issue price of the obligation at the time the obligation was originated; or

(2) Is at least equal to 80 percent of the adjusted issue price of the obligation at the

time the sponsor contributes the obligation to the REMIC.

.04 In the absence of a lien release or certain other transactions that alter a legal right or obligation either of a REMIC or of the issuer of a mortgage loan that is held by the REMIC, the mortgage loan is not retested to determine whether the current value of its real estate collateral still satisfies the principally secured test.

.05 Under § 1.860G-2(a)(8), if a REMIC releases its lien on an interest in real property that secures a qualified mortgage, the mortgage ceases to be a qualified mortgage on the date the lien is released unless either—

(1) The mortgage is defeased in the manner described in § 1.860G-2(a)(8)(ii); or

(2) The lien is released in a modification that satisfies both of the following criteria:

(i) The modification either is not a significant modification as defined in § 1.860G-2(b)(2) or, under one of the exceptions in § 1.860G-2(b)(3), is not treated as a significant modification for purposes of § 1.860G-2(b)(1); and

(ii) Following the modification, the obligation continues to be principally secured by an interest in real property, as determined by § 1.860G-2(b)(7).

.06 Section 1.860G-2(b)(7) provides that, for purposes of §§ 1.860G-2(a)(8)(i), 1.860G-2(b)(3)(v), and 1.860G-2(b)(3)(vi), an obligation continues to be principally secured by an interest in real property following a transaction that alters the legal rights of the parties only if, as of the date of the transaction, the obligation satisfies either paragraph (b)(7)(ii) or paragraph (b)(7)(iii) of § 1.860G-2.

.07 An obligation satisfies § 1.860G-2(b)(7)(ii) if the fair market value of the interest in real property securing the obligation, determined as of the date of the modification, is at least 80 percent of the adjusted issue price of the modified obligation, determined as of the date of the modification. If, as of the date of the modification, the servicer reasonably believes that the obligation satisfies the criterion in the preceding sentence, then the obligation is deemed to do so. A reasonable belief does not exist if the servicer actually knows, or has reason to know, that the criterion is not satisfied.

For purposes of § 1.860G-2(b)(7)(ii), a servicer must base a reasonable belief on—

(1) A current appraisal performed by an independent appraiser;

(2) An appraisal that was obtained in connection with the origination of the obligation and, if appropriate, that has been updated for the passage of time and for any other changes that might affect the value of the interest in real property;

(3) The sales price of the interest in real property in the case of a substantially contemporary sale in which the buyer assumes the seller's obligations under the mortgage; or

(4) Some other commercially reasonable valuation method.

.08 An obligation satisfies § 1.860G-2(b)(7)(iii) if § 1.860G-2(b)(7)(ii) is not satisfied but the fair market value of the interest in real property that secures the obligation immediately after the modification equals or exceeds the fair market value of the interest in real property that secured the obligation immediately before the modification. The criterion in the preceding sentence must be established by a current appraisal, an original (and updated) appraisal, or some other commercially reasonable valuation method; and the servicer must not actually know, or have reason to know, that the criterion in the preceding sentence is not satisfied.

.09 Under § 1.860G-2(a)(5), obligations secured by interests in real property include mortgage pass-through certificates guaranteed by GNMA, FNMA, FHLMC, or CMHC (Canada Mortgage and Housing Corporation) and other investment trust interests that represent undivided beneficial ownership in a pool of obligations principally secured by interests in real property and related assets that would be considered to be permitted investments if the investment trust were a REMIC, provided that the investment trust is classified as a trust under § 301.7701-4(c) of the Procedure and Administration Regulations.

.10 Under § 1.860G-2(b)(6), if a REMIC holds as a qualified mortgage a pass-through certificate or other investment trust interest of the type described in § 1.860G-2(a)(5), the modification of a mortgage loan that backs the pass-through certificate or other interest is not a modification of the pass-through certificate or

other interest unless the investment trust structure was created to avoid the prohibited transaction rules of section 860F(a). Analogously, unless a substantial purpose of the trust structure was to avoid the restrictions imposed by § 1.860G-2(a)(8) and § 1.860G-2(b), the release of a lien on an interest in real property that secures an obligation held by the trust does not cause § 1.860G-2(a)(8) automatically to disqualify the obligation.

.11 When there are significant declines in commercial real estate property values, properties that secure commercial loans may fall in value to an amount below the 80 percent threshold. The borrower may be in default on its obligation or default may be reasonably foreseeable. In these instances, the servicer may work with the borrower to avoid default.

.12 In the preamble to final regulations published September 16, 2009 (the "Final Regulations"), the Service noted that, although a qualified mortgage must be principally secured by an interest in real property, a release pursuant to the terms of a mortgage obligation is not a release that disqualifies the mortgage if the mortgage continues to be principally secured by real property after giving effect to any releases, substitutions, additions, or other alterations to the collateral. In addition, the preamble explains that a lien release occasioned by a default or reasonably foreseeable default would not disqualify a mortgage if the principally secured test continues to be satisfied. *See* T.D. 9463, 74 FR 47436-01.

## SECTION 5. SCOPE

.01 This revenue procedure applies to a release of a lien on an interest in real property that secures a mortgage loan held by a REMIC in circumstances in which §§ 1.860G-2(b)(7)(ii) and 1.860G-2(b)(7)(iii) are not satisfied. A release of a lien that is effected by either a grandfathered transaction described in section 5.02 of this revenue procedure or by a qualified pay-down transaction described in section 5.03 of this revenue procedure qualifies for the benefits of this revenue procedure.

.02 A grandfathered transaction is any release of a lien on an interest in real property that satisfies the following two criteria—



(1) The lien release is not a modification for purposes of § 1.1001-3(c) because it occurred by operation of the terms of the debt instrument (including a lien release pursuant to the exercise of a unilateral option of the borrower within the meaning of § 1.1001-3(c)(3)); and

(2) The terms providing for the lien release are contained in a contract that was executed no later than December 6, 2010.

.03 A “qualified pay-down transaction” is a transaction in which a lien is released on an interest in real property and which includes a payment by the borrower resulting in a reduction in the adjusted issue price of the loan by a “qualified amount” as described in section 5.04 of this revenue procedure.

.04 A “qualified amount” is an amount that is equal to or greater than at least one of the following:

(1) the sum of —

(a) the net proceeds available to the borrower from an arms-length sale of the property to an unrelated person;

(b) the net proceeds from the receipt of a condemnation award with respect to the property; and

(c) in a case to which (a) or (b) above applies, the net proceeds from the receipt of an insurance or tort settlement with respect to the property;

(2) an amount that is determined under the loan agreement and that equals or exceeds the product of —

(a) the adjusted issue price of the obligation at the time of the lien release; multiplied by

(b) a fraction equal to the fair market value at origination of the released interest, divided by the aggregate fair market value at origination of all of the interests in real property that secured the loan immediately before the lien release;

(3) the fair market value (at the time of the transaction) of the interest in real property the lien on which is released, plus the amount of any tort or insurance settlement that is expected to be, or has been, received with respect to the property and that is not reflected directly or indirectly in the property’s fair market value at the time of the transaction;

or

(4) an amount such that, immediately after the transaction, the ratio of the adjusted issue price of the loan to the fair market value of the interests in real property securing the loan is no greater than what that ratio was immediately before the transaction.

.05 The term “net proceeds” for purposes of section 5.04(1) of this revenue procedure means the amount realized for purposes of computing gain or loss under section 1001.

.06 If, as of the date of the lien release, the servicer reasonably believes that the transaction satisfies one of the criteria set forth in section 5.04(3) or 5.04(4) of this revenue procedure, then that criterion is

deemed to be satisfied. A reasonable belief does not exist, however, if the servicer actually knows, or has reason to know, that the criterion is not satisfied. For purposes of this section 5.06, a reasonable belief must be based on the information or methods described in § 1.860G-2(b)(7)(ii)(A)-(D).

## SECTION 6. APPLICATION

If a release of a lien on an interest in real property that secures a mortgage loan held by a REMIC satisfies the requirements of section 5 of this revenue procedure, the Service will not challenge the mortgage loan’s status as a qualified mortgage on the grounds that the loan fails to be principally secured by an interest in real property for purposes of section 860G(a)(3)(A) and § 1.860G-2(a)(8)(i)(B) following the release of the lien.

## SECTION 7. EXAMPLES

The following examples illustrate the application of this revenue procedure:

### .01 Example 1

#### (1) Facts.

(i) On a date subsequent to December 6, 2010, Borrower *B* issued a mortgage loan to lender *L*. At origination, the stated principal of *B*’s loan was \$100 million, and nine interests in real property ( $X_1$  through  $X_9$ ) secured the loan. *L* contributed the loan to *R*, a REMIC.

(ii) At the time when the loan was originated and the liens were created, the fair market values of these properties were as shown in the center column below:

Real Property Interest	Fair market value at origination	Fair market value at lien release
$X_1$	\$20 million	n/a
$X_2$	\$5 million	\$2 million
$X_3$	\$25 million	\$12.5 million
$X_4$ through $X_9$	\$60 million	\$39 million

(iii) Under the loan documents, in the event that some of the real collateral suffers a casualty loss, *B* may demand a release of the lien(s) on the affected collateral but may do so only if *B* pays down the loan with the proceeds of a sale of that collateral and the proceeds of any insurance settlement with respect to the casualty loss.

(iv) On Date 1, *R* released the lien on  $X_1$  in a transaction that did not cause the mortgage loan issued by *B* to cease to be a qualified mortgage.

(v) Subsequent to Date 1, on Date 2, properties  $X_2$  and  $X_3$  sustained a casualty loss. Immediately prior to the casualty, properties  $X_2$  and  $X_3$  had an aggregate fair market value of \$19.5 million. On Date 2, after

the casualty, they had a fair market value of \$14.5 million.

(vi) Consistent with *B*’s rights under the loan documents, *B* demanded a release of the liens on properties  $X_2$  and  $X_3$  to enable *B* to sell them. At the time the liens on these two properties were released, the values of the various properties securing the loan were as shown in the right-hand column in the table above. *B* disposed of properties  $X_2$  and  $X_3$  in an arms-length sale to an unrelated person. The net proceeds from the sale within the meaning of section 5.05 of this revenue procedure were \$14 million, and *B* paid down the loan by that amount when *B* received those proceeds. Subsequently, *B* received \$5 million as an insurance settlement with respect to the loss suffered

by the two properties, and *B* paid down the loan by an additional \$5 million when those proceeds were received.

#### (2) Analysis.

(i) Under § 1.860G-2(a)(8), *R*’s release of the liens on properties  $X_2$  and  $X_3$  causes the loan to cease to be a qualified mortgage unless the release takes place in a transaction that satisfies either paragraph (a)(8)(i) or paragraph (a)(8)(ii) of § 1.860G-2. The release of the liens on  $X_2$  and  $X_3$  does not satisfy § 1.860G-2(a)(8)(ii) because the release is not pursuant to a defeasance. The lien release, however, satisfies § 1.860G-2(a)(8)(i) if the transaction in which it occurs meets the requirements of § 1.860G-2(a)(8)(i)(A) and § 1.860G-2(a)(8)(i)(B).

(ii) The transaction in which the lien was released resulted from the exercise of an option that is unilateral within the meaning of § 1.1001-3(c)(3). Thus, the transaction is not a significant modification as defined in § 1.860G-2(b)(2) and therefore is described in § 1.860G-2(a)(8)(i)(A). In addition, however, to satisfy § 1.860G-2(a)(8)(i)(B), the loan must continue to be principally secured by an interest in real property as determined by § 1.860G-2(b)(7).

(iii) The release of the lien on  $X_2$  and  $X_3$  does not satisfy the 80-percent test in § 1.860G-2(b)(7)(ii) or the alternative test in § 1.860G-2(b)(7)(iii). The loan, however, continues to be treated as principally secured by an interest in real property if this release and the associated payoff of the loan are within the scope of section 5 of this revenue procedure.

(iv) The release of the liens on properties  $X_2$  and  $X_3$  is not part of a grandfathered transaction described in section 5.02 of this revenue procedure because  $B$  issued the loan after December 6, 2010.

(v) The release of the liens on properties  $X_2$  and  $X_3$ , however, is within the scope of section 5.03 of this revenue procedure if it is part of a “qualified payoff transaction.” First, the transaction involved a release of a lien on an interest in real property and included a payment by the borrower that resulted in a reduction in the adjusted issue price of the loan. Second, the transaction meets the requirements of both section 5.03(4) and section 5.03(1) of this revenue procedure. Third, the payment by the borrower to reduce the adjusted issue price of the loan is a “qualified amount” as described in section 5.04(1) of this revenue procedure. The qualified amount is \$19 million, which is the amount realized for purposes of computing gain or loss under section 1001 of the Code. Thus, the transaction satisfies the requirements of section 5.03 of this revenue procedure. Therefore, under Section 6 of this revenue procedure, the Service will not challenge the mortgage loan’s status as a qualified mortgage on the grounds that, following the release of the liens, it fails to be principally secured by an interest in

real property for purposes of section 860G(a)(3)(A) and § 1.860G-2(a)(8)(i)(B).

.02 Example 2

(1) Facts.

(i) Assume the same facts as in (i) and (iv) of Example 1. Assume further that the executed loan documents give  $B$  a unilateral right to obtain a release of any one or more of the properties that secure the loan, but only if  $B$  pays down 110 percent of the “allocated loan amount” for the property or properties the liens on which are being released. The loan documents define “allocated loan amount” as the proportionate loan balance of the properties on which liens are released, based on the relative appraised values of the properties at origination of the loan.

(ii) At the time when the loan was originated and the liens were created, the fair market values of the nine properties securing the loan were as shown in the center column below. The appraised values at that time were the same.

Real Property Interest	Fair market value at origination	Fair market value at lien release
$X_1$	\$20 million	n/a
$X_2$	\$5 million	\$3.25 million
$X_3$	\$25 million	\$16.25 million
$X_4$ through $X_9$	\$60 million	\$39 million

(iii) At a time when the fair market values of  $X_2$  through  $X_9$  had declined by 35%,  $B$  exercised its right to obtain a release of the liens on  $X_2$  and  $X_3$ . Immediately before  $R$  released the liens, the loan’s adjusted

issue price (within the meaning of § 1.1275-1(b) for federal income tax purposes was \$79 million (as a result of amortization and prepayments on the loan). The unpaid loan balance for purposes of computing

the allocated loan amount under the loan agreement was \$80 million. To obtain the lien release,  $B$  paid \$29,333,333 to reduce the unpaid principal on the loan. This amount was determined as—

$$1.10 \times \$80,000,000 \times$$

$$([\$5,000,000 + \$25,000,000] / [\$5,000,000 + \$25,000,000 + \$60,000,000])$$

(iv) Immediately before and after the lien release and payoff, the values of properties  $X_2$  through  $X_9$  were as shown in the right-hand column in the table above. Thus, the aggregate fair market value (\$39 million) of the interests in real property that secured the loan immediately after the release of the lien was less than 80 percent of the loan’s adjusted issue price (\$49,666,667). ( $\$49,666,667 = \$79,000,000 - \$29,333,333$ ). ( $[\$39,000,000 / 49,666,667] = 78.5$  percent).

(2) Analysis.

(i) Under § 1.860G-2(a)(8),  $R$ ’s release of the liens on properties  $X_2$  and  $X_3$  causes the loan to cease to be a qualified mortgage unless the release takes place in a transaction that satisfies either paragraph (a)(8)(i) or paragraph (a)(8)(ii) of § 1.860G-2. The release of the liens on  $X_2$  and  $X_3$  does not satisfy § 1.860G-2(a)(8)(ii) because it is not pursuant to a defeasance. The release of the liens on  $X_2$  and  $X_3$ , however, satisfies § 1.860G-2(a)(8)(i) if the transaction in which the liens are released meets the requirements of § 1.860G-2(a)(8)(i)(A) and § 1.860G-(a)(8)(i)(B).

(ii) The transaction in which the liens were released resulted from the exercise of an option that is unilateral within the meaning of § 1.1001-3(c)(3). Thus, the transaction is not a significant modification as defined in § 1.860G-2(b)(2) and therefore is described in § 1.860G-2(a)(8)(i)(A). In addition, however, to satisfy § 1.860G-2(a)(8)(i)(B), the loan must

continue to be principally secured by an interest in real property as determined by § 1.860G-2(b)(7).

(iii) The release of the liens on  $X_2$  and  $X_3$  does not satisfy the 80-percent test in § 1.860G-2(b)(7)(ii) or the alternative test in § 1.860G-2(b)(7)(iii). The loan, however, continues to be treated as principally secured by an interest in real property if the release and the associated payoff of the loan are within the scope of section 5 of this revenue procedure.

(iv) The release of the liens on properties  $X_2$  and  $X_3$  is not part of a grandfathered transaction described in section 5.02 of this revenue procedure because  $B$  issued the loan on a date after December 6, 2010.

(v) The release of the liens on properties  $X_2$  and  $X_3$ , however, satisfies section 5.03 of this revenue procedure if it is part of a “qualified payoff transaction.” First, the transaction involves a release of a lien on an interest in real property and contains a payment by the borrower that results in a reduction in the adjusted issue price of the loan. Second, because the transaction is pursuant to the terms of the loan document and is not a modification for purposes of § 1.1001-3, the condition in section 5.03(1) of this revenue procedure is satisfied. Third, the payment by the borrower to reduce the adjusted issue price of the loan is a “qualified amount” because it is not less than the amount described in section 5.04(2) of this revenue procedure. The \$29,333,333 amount by which the loan was paid down (the contractually determined

allocated loan amount) is greater than the minimum amount of \$26,333,333, which is required by section 5.04(2). ( $\$26,333,333 = [79,000,000 \times (30,000,000 / 90,000,000)]$ ). (The value of  $X_1$  at origination is not included in the denominator because  $X_1$  did not secure the loan immediately before the lien release.) Thus, the transaction is a qualified payoff transaction within the meaning of section 5.03 of this revenue procedure, and, therefore, under section 6 of this revenue procedure, the Service will not challenge the mortgage loan’s status as a qualified mortgage on the grounds that, following the release of the liens, it fails to continue to be principally secured by an interest in real property for purposes of section 860G(a)(3)(A) and § 1.860G-2(a)(8)(i)(B).

.03 Example 3

(1) Facts.

(i) Assume that the facts are the same as (i) of Example 2, except that at origination there was also a tenth property ( $X_{10}$ ) securing the loan. Property  $X_{10}$  was an “outparcel,” which had not been appraised at the time of origination of the loan and to which  $L$  had not assigned any value in underwriting the loan. The loan documents at origination granted  $B$  an unconditional right to demand a release of the lien on  $X_{10}$  at any time, without making any special payment on the loan. Although the value of property  $X_{10}$  was small compared to properties  $X_1$  through  $X_9$ , it was positive at all times relevant to this example. Moreover, at the

time of the lien release described below, the servicer of the loan knew or had reason to know that the fair market value of  $X_{10}$  had been positive at origination.

(ii) At the time when the loan was originated and the liens were created, the fair market values of the

ten properties securing the loan were as shown in the center column below. Except for property  $X_{10}$ , the appraised values at that time were the same. Immediately before and after the lien release, the fair market values of properties  $X_2$  through  $X_{10}$  were as shown

in the right-hand column below. (Except for property  $X_{10}$ , the information in this table is the same as that in Facts (ii) of Example 2.)

Real Property Interest	Fair market value at origination	Fair market value at lien release
$X_1$	\$20 million	n/a
$X_2$	\$5 million	\$3.25 million
$X_3$	\$25 million	\$16.25 million
$X_4$ through $X_9$	\$60 million	\$39 million
$X_{10}$	Greater than zero	Greater than zero

(iii) After Date 1 B exercised its right to demand a release of the lien on property  $X_{10}$  (the outparcel). B did not make any payment on the loan in connection with the lien release.

(2) *Analysis.*

(i) Under § 1.860G-2(a)(8), R's release of the lien on property  $X_{10}$  causes the loan to cease to be a qualified mortgage unless the release takes place in a transaction that satisfies either paragraph (a)(8)(i) or paragraph (a)(8)(ii) of § 1.860G-2. The lien release on property  $X_{10}$  does not satisfy § 1.860G-2(a)(8)(ii) because it is not pursuant to a defeasance. The lien release on property  $X_{10}$  satisfies § 1.860G-2(a)(8)(i) only if the transaction in which it occurs meets the requirements of both § 1.860G-2(a)(8)(i)(A) and § 1.860G-2(a)(8)(i)(B).

(ii) The transaction in which the lien was released resulted from the exercise of an option that is unilateral within the meaning of § 1.1001-3(c)(3). Thus, the transaction is not a significant modification as defined in § 1.860G-2(b)(2) and therefore is described in § 1.860G-2(a)(8)(i)(A). In addition, however, to satisfy § 1.860G-2(a)(8)(i)(B), the loan must continue to be principally secured by an interest in real property as determined by § 1.860G-2(b)(7).

(iii) The release of the lien on  $X_{10}$  does not satisfy the 80-percent test in § 1.860G-2(b)(7)(ii) or the alternative test in § 1.860G-2(b)(7)(iii).

(iv) The unilateral right to release the lien on property  $X_{10}$  without paying down the loan is not a grandfathered transaction described in section 5.02 of this revenue procedure because B issued the loan after December 6, 2010.

(v) The release of the lien on property  $X_{10}$  is within the scope of section 5.03 of this revenue procedure only if it is pursuant to a "qualified pay-down transaction." Under the loan documents, the allocated loan amount of property  $X_{10}$  may be zero, but that amount does not satisfy section 5.04(2) of this revenue procedure. Although property  $X_{10}$  was assigned no value for underwriting purposes, the servicer knew or had reason to know that, at origination, it had a value greater than \$0. Therefore, the amount required by section 5.04(2) of this revenue procedure is greater than zero.

(vi) Because the transaction does not meet the requirements either of section 5 of this revenue procedure or of § 1.860G-2(b)(7)(ii)-(iii), § 1.860G-2(a)(8)(i)(B) is not satisfied, and § 1.860G-(a)(8) causes the loan to cease being a qualified mortgage on the date that the lien is released.

## SECTION 8. EFFECTIVE DATE

This revenue procedure applies to releases of liens on interests in real property securing mortgage loans held by REMICs that are effected on or after September 16, 2009.

## SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Richard LaFalce of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information, contact Mr. LaFalce at (202) 622-3930 (not a toll-free call).

*26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.*

(Also Part I, §§ 301.7701-1, 301.7701-2, 301.7701-3.)

## Rev. Proc. 2010-32

### SECTION 1. PURPOSE

The Treasury Department and the Internal Revenue Service (IRS) have become aware that taxpayers are concerned about the validity of elections made by certain foreign eligible entities under § 301.7701-3(c) of the Procedure and Administration Regulations to be classified for federal tax purposes as a partnership or disregarded as an entity separate from its owner (a disregarded entity). The Treasury Department and IRS understand that these concerns arise due to uncertainty regarding the number of owners for federal tax purposes of the foreign eligible entity on the effective date of the election. To alleviate

these concerns and simplify tax administration, this revenue procedure provides that, if the requirements of this revenue procedure are satisfied, the IRS will treat an election under § 301.7701-3(c) to classify a foreign eligible entity that is a qualified entity (as defined in section 3.02 of this revenue procedure) as a partnership or disregarded entity as an election to be treated as a partnership or disregarded entity (as appropriate) rather than as an association taxable as a corporation.

### SECTION 2. BACKGROUND

.01 Section 301.7701-1(a)(1) states that the Internal Revenue Code (Code) prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

.02 Section 301.7701-1(b) provides that the classification of organizations that are recognized as separate entities is determined under §§ 301.7701-2, 301.7701-3, and 301.7701-4 unless a provision of the Code provides for special treatment of that organization.

.03 Section 301.7701-2(a) defines the term "business entity" as any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3 ("a disregarded entity")) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code. A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classi-

fied as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.

.04 Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner. Elections are necessary only if an eligible entity does not want its default classification or if an eligible entity chooses to change its classification.

.05 Section 301.7701-3(b)(2)(i) provides that, except for certain existing entities described in § 301.7701-3(b)(3), unless a foreign eligible entity elects otherwise, the entity is: (A) a partnership if it has two or more members and at least one member does not have limited liability; (B) an association if all members have limited liability; or (C) disregarded as an entity separate from its owner if it has a single member that does not have limited liability.

.06 Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832, *Entity Classification Election*, with the appropriate IRS Service Center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed.

.07 Section 301.7701-3(c)(1)(ii) provides that an eligible entity required to file a federal tax or information return for the taxable year for which an election is made must attach a copy of its Form 8832 to its federal tax or information return for that year. If the entity is not required to file a return for that year, a copy of its Form 8832 must be attached to the federal income tax

or information return of any direct or indirect owner of the entity for the taxable year of the owner that includes the date on which the election was effective.

.08 Section 301.7701-3(c)(1)(iv) provides in part that, if an eligible entity makes an election under paragraph (c)(1)(i) of this section to change its classification (other than an election made by an existing entity to change its classification as of the effective date of this section), the entity cannot change its classification by election again during the 60 months succeeding the effective date of the election. An election by a newly formed eligible entity that is effective on the date of formation is not considered a change for purposes of this paragraph (c)(1)(iv).

.09 Section 301.7701-3(c)(2)(i) provides that an election made under § 301.7701-3(c)(1)(i) of this section must be signed by: (A) each member of the electing entity who is an owner at the time the election is filed; or (B) any officer, manager, or member of the electing entity who is authorized (under local law or the entity's organizational documents) to make the election and who represents to having such authorization under penalties of perjury.

### SECTION 3. SCOPE

.01 *In General.* This revenue procedure provides guidance on the classification for federal tax purposes of a business entity that is a qualified entity (as defined in section 3.02 of this revenue procedure) and is in lieu of the letter ruling process ordinarily used to obtain relief for a late change of entity classification election filed pursuant to §§ 301.7701-3(c), 301.9100-1, and 301.9100-3. Accordingly, user fees do not apply to corrective actions under this revenue procedure.

.02 *Qualified Entity.* For purpose of this revenue procedure, a business entity is a "qualified entity" if the following conditions are satisfied:

- (1) The business entity is an eligible entity under § 301.7701-3(a);
- (2) The business entity is foreign under § 301.7701-5(a);
- (3) The classification of the business entity, either by default under § 301.7701-3(b)(2)(i)(B) for a newly formed or newly relevant eligible entity, or by election under § 301.7701-3(c) for an

existing relevant entity, would be or was an association taxable as a corporation;

(4) As permitted under § 301.7701-3(c), the business entity filed an otherwise valid Form 8832 electing to be treated for federal tax purposes,

(a) As a partnership based on the reasonable assumption that it had two or more owners as of the effective date of the election; or

(b) As a disregarded entity based on the reasonable assumption that it had a single owner as of the effective date of the election;

(5) For federal tax purposes, either:

(a) The business entity and its actual and purported owners (or owner) have treated the entity consistently with the election on the otherwise valid Form 8832 on all filed information and tax returns; or

(b) No information or tax returns have been required to be filed since the effective date for the election made on the otherwise valid Form 8832; and

(6) The period of limitations on assessments (as established under section 6501(a) of the Code) has not ended for any taxable year of the business entity or its actual and purported owners (or owner) affected by the election made on the otherwise valid Form 8832.

.03 *Entities That Fail to Qualify for Relief Under This Revenue Procedure.*

A business entity that does not qualify for relief under this revenue procedure may request relief through the letter ruling process in accordance with Rev. Proc. 2010-1, 2010-1 I.R.B. 1 (or its successor).

### SECTION 4. APPLICATION

.01 If a qualified entity files an otherwise valid Form 8832 to be classified as a partnership for federal tax purposes but it is later determined that the qualified entity had a single owner for federal tax purposes as of the effective date of the election, the IRS will treat the Form 8832 as an election to classify the qualified entity as a disregarded entity for federal tax purposes provided that:

- (1) The qualified entity's actual single owner and purported owners as of the effective date of the election file original or amended returns consistent with the treatment of the entity as a disregarded entity for any taxable year that would have been affected if the election had been made to

treat the qualified entity as a disregarded entity for federal tax purposes;

(2) All required amended returns are filed before the close of the period of limitations on assessments under § 6501(a) for any relevant taxable year; and

(3) A corrected Form 8832 is filed with the appropriate Internal Revenue Service Center and a copy of the corrected Form 8832 is attached to the single owner's amended return for the taxable year during which the original election was made as required under § 301.7701-3(c)(1)(ii). The statement "FILED PURSUANT TO REVENUE PROCEDURE 2010-32" must be included across the top of the corrected Form 8832. Additionally, the corrected Form 8832 must satisfy the requirements of § 301.7701-3(c)(2)(i).

.02 If a qualified entity files an otherwise valid Form 8832 electing to be classified as a disregarded entity for federal tax purposes but it is later determined that the qualified entity had two or more owners

for federal tax purposes as of the effective date of the election, the IRS will treat the Form 8832 as an election to classify the qualified entity as a partnership for federal tax purposes provided that:

(1) The qualified entity files information returns and its actual owners file original or amended returns consistent with the treatment of the entity as a partnership for any taxable year that would have been affected if the original election had been made to treat the qualified entity as a partnership for federal tax purposes;

(2) All required information and amended returns are filed before the close of the period of limitations on assessments under § 6501(a) for the relevant taxable year; and

(3) A corrected Form 8832 is filed with the appropriate Internal Revenue Service Center and a copy of the corrected Form 8832 is attached to the owners' amended returns for the taxable year during which the original election was made as required under § 301.7701-3(c)(1)(ii).

The statement "FILED PURSUANT TO REVENUE PROCEDURE 2010-32" must be included across the top of the corrected Form 8832. Additionally, the corrected Form 8832 must satisfy the requirements of § 301.7701-3(c)(2)(i).

#### SECTION 5. EFFECTIVE DATE

This revenue procedure is effective on September 7, 2010. Any qualified entity that meets the requirements of this revenue procedure as of September 7, 2010, may seek relief under this revenue procedure.

#### SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Bryan A. Rimmke of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Rimmke at (202) 622-3050 (not a toll-free call).

## Part IV. Items of General Interest

# Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

### Announcement 2010-53

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.

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>Florida</b>				
Sarasota	Swaney, Natalie M.	CPA	Suspended by default decision in expedited proceeding under § 10.82 (permanently enjoined by U.S. District Court from acting as a Federal tax return preparer, representing anyone before the Internal Revenue Service, engaging in conduct subject to penalty under § 6700, engaging in activity subject to penalty under § 6701, and other tax-related activities.	Indefinite from July 27, 2010
Lutz	Kaskey, Tim W.	CPA	Disbarred by decision on appeal for violations of § 10.51(d) (1994) (failure to timely file Federal income tax returns for five years), § 10.22(a) (1994) (failure to exercise due diligence in preparing, approving, and filing tax returns for clients and failure to determine the correctness of oral or written representations made to the Department of the Treasury), and § 10.34(b) (1994) (failure to inform clients of any penalties reasonably likely to apply, as well as the opportunities to avoid such penalties with respect to the tax position submitted to the IRS on clients' behalf)	Indefinite from May 28, 2010
<b>Ohio</b>				
Akron	Hoff, George L.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (suspension of attorney license)	Indefinite from July 30, 2010

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>Ohio (Continued)</b>				
Cuyahoga Falls	Ridenbaugh, Aaron A.	Attorney	Suspended by decision in expedited proceeding under § 10.82 (suspension of attorney license)	Indefinite from July 30, 2010
<b>Oklahoma</b>				
Oklahoma	McMurrain, Lisa	CPA	Suspended by decision in expedited proceeding under § 10.82 (revocation of CPA license)	Indefinite from July 30, 2010
<b>Texas</b>				
Austin	Bender, John P.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (suspension of attorney license)	Indefinite from July 30, 2010
<b>Virginia</b>				
Roanoke	Miller, Jr., Walter P.	CPA		Reinstated July 20, 2010
<b>West Virginia</b>				
Kenna	Peterson, Stacey A.	CPA	Suspended by decision in expedited proceeding under § 10.82 (revocation of CPA license)	Indefinite from July 27, 2010
Beckley	Wallen, David G.	CPA		Reinstated July 13, 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.  
Z—Corporation.

## **Numerical Finding List<sup>1</sup>**

Bulletins 2010–27 through 2010–36

### **Announcements:**

2010-43, 2010-27 I.R.B. 42  
2010-44, 2010-28 I.R.B. 54  
2010-45, 2010-29 I.R.B. 87  
2010-46, 2010-29 I.R.B. 87  
2010-47, 2010-30 I.R.B. 173  
2010-48, 2010-32 I.R.B. 234  
2010-49, 2010-34 I.R.B. 272  
2010-50, 2010-33 I.R.B. 260  
2010-51, 2010-33 I.R.B. 261  
2010-52, 2010-36 I.R.B. 315  
2010-53, 2010-36 I.R.B. 323

### **Notices:**

2010-48, 2010-27 I.R.B. 9  
2010-49, 2010-27 I.R.B. 10  
2010-50, 2010-27 I.R.B. 12  
2010-51, 2010-29 I.R.B. 83  
2010-52, 2010-30 I.R.B. 88  
2010-53, 2010-31 I.R.B. 182  
2010-55, 2010-33 I.R.B. 253  
2010-56, 2010-33 I.R.B. 254  
2010-57, 2010-34 I.R.B. 267

### **Proposed Regulations:**

REG-139343-08, 2010-33 I.R.B. 256  
REG-151605-09, 2010-31 I.R.B. 184  
REG-112841-10, 2010-27 I.R.B. 41  
REG-118412-10, 2010-29 I.R.B. 85  
REG-120391-10, 2010-35 I.R.B. 310  
REG-120399-10, 2010-32 I.R.B. 239

### **Revenue Procedures:**

2010-25, 2010-27 I.R.B. 16  
2010-26, 2010-30 I.R.B. 91  
2010-27, 2010-31 I.R.B. 183  
2010-28, 2010-34 I.R.B. 270  
2010-29, 2010-35 I.R.B. 309  
2010-30, 2010-36 I.R.B. 316  
2010-32, 2010-36 I.R.B. 320

### **Revenue Rulings:**

2010-18, 2010-27 I.R.B. 1  
2010-19, 2010-31 I.R.B. 174  
2010-20, 2010-36 I.R.B. 312

### **Tax Conventions:**

2010-48, 2010-32 I.R.B. 234  
2010-52, 2010-36 I.R.B. 315

### **Treasury Decisions:**

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

### **Treasury Decisions— Continued:**

9487, 2010-28 I.R.B. 48  
9488, 2010-28 I.R.B. 51  
9489, 2010-29 I.R.B. 55  
9490, 2010-31 I.R.B. 176  
9491, 2010-32 I.R.B. 186  
9492, 2010-33 I.R.B. 242  
9493, 2010-35 I.R.B. 273

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

## **Finding List of Current Actions on Previously Published Items<sup>1</sup>**

Bulletins 2010–27 through 2010–36

### **Notices:**

#### **2003-19**

Revoked by

Notice 2010-53, 2010-31 I.R.B. 182

#### **2009-47**

Obsolated by

Rev. Proc. 2010-28, 2010-34 I.R.B. 270

### **Revenue Procedures:**

#### **81-18**

Obsolated by

Rev. Proc. 2010-27, 2010-31 I.R.B. 183

#### **2007-44**

Modified by

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

#### **2009-18**

Obsolated in part by

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

#### **2009-30**

Superseded by

Rev. Proc. 2010-26, 2010-30 I.R.B. 91

### **Treasury Decisions:**

#### **9487**

Corrected by

Ann. 2010-50, 2010-33 I.R.B. 260

---

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









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

Order Processing Code:  
3465

Easy Secure Internet:  
bookstore.gpo.gov

## Internal Revenue Cumulative Bulletins Publications and Subscription Order Form

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

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

### Publications

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

### Subscriptions

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

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

**Standing Order Service\***

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

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

**Authorization**

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

VISA  MasterCard  Discover/NOVUS  American Express

Superintendent of Documents (SOD) Deposit Account

Authorizing signature (Standing orders not valid unless signed.)

\_\_\_\_\_

Please print or type your name.

Daytime phone number (\_\_\_\_\_) \_\_\_\_\_

**SuDocs Deposit Account**

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

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



### Check method of payment:

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

(expiration date)

*Thank you for your Order!*

Authorizing signature

06/06

Company or personal name

(Please type or print)

Additional address/attention line

Street address

City, State, Zip Code

E-mail address

Daytime phone including area code

Purchase order number (optional)

#### \*Standing Order Service

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

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

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

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

# INTERNAL REVENUE BULLETIN

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

## CUMULATIVE BULLETINS

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

---

## ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at [www.irs.gov](http://www.irs.gov). Select Businesses. Under Businesses Topics, select More Topics. Then select Internal Revenue Bulletins.

---

## INTERNAL REVENUE BULLETINS ON CD-ROM

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

---

## HOW TO ORDER

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

---

## WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

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

---

**Internal Revenue Service**  
**Washington, DC 20224**

Official Business  
Penalty for Private Use, \$300