

## **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. 2010-24, page 400.**

**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 October 2010.

#### **REG-119046-10, page 415.**

Proposed regulations under section 6012 of the Code allow the IRS to require corporations to file a schedule disclosing uncertain tax positions related to the tax return as required by the IRS. A public hearing is scheduled for October 15, 2010.

#### **Notice 2010-54, page 403.**

This notice provides rules relating to the availability of the production tax credit for refined coal. Notice 2009-90 superseded.

#### **Notice 2010-62, page 411.**

This notice provides interim guidance regarding the codification of the economic substance doctrine under section 7701(o) of the Code and the related amendments to the penalties under sections 6662, 6662A, 6664 and 6676 by the Health Care Education Reconciliation Act of 2010. Rev. Proc. 2010-3 modified.

#### **Rev. Proc. 2010-31, page 413.**

This procedure provides safe harbors for determining the finality of foreign adoptions for purposes of the adoption credit and the exclusion for employer-provided assistance for qualified adoption expenses. The procedure applies to adoptions governed by the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

#### **Announcement 2010-60, page 417.**

This announcement withdraws proposed regulations published on September 10, 2003, in the Federal Register (REG-146893-02 and REG-115037-00) relating to the treatment of controlled services transactions under section 482 and the allocation of income from intangibles, in particular with respect to contributions by a controlled party to the value of an intangible that is owned by another controlled party. The IRS and Treasury Department are withdrawing these regulations because they have been superseded.

### **EMPLOYEE PLANS**

#### **Notice 2010-61, page 408.**

**Weighted average interest-rate update; corporate bond indices; 30-year Treasury securities; segment rates.** This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in September 2010; the 24-month average segment rates; the funding transitional segment rates applicable for September 2010; and the minimum present value transitional rates for August 2010.

### **EMPLOYMENT TAX**

#### **Announcement 2010-60, page 417.**

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**Announcement of Declaratory Judgment Proceedings Under Section 7428 begins on page 417.**  
**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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# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 23.—Adoption Credit

Safe harbors are provided for determining the finality of foreign adoptions governed by the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption for purposes of the credit for qualified adoption expenses. See Rev. Proc. 2010-31, page 413.

## 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 October 2010. See Rev. Rul. 2010-24, page 400.

## Section 137.—Adoption Assistance Programs

Safe harbors are provided for determining the finality of foreign adoptions governed by the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption for purposes of the exclusion for employer-provided assistance for qualified adoption expenses. See Rev. Proc. 2010-31, page 413.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of October 2010. See Rev. Rul. 2010-24, page 400.

## 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 October 2010. See Rev. Rul. 2010-24, page 400.

## Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2010. See Rev. Rul. 2010-24, page 400.

## 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 October 2010. See Rev. Rul. 2010-24, page 400.

## 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 October 2010. See Rev. Rul. 2010-24, page 400.

## 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 October 2010. See Rev. Rul. 2010-24, page 400.

## 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 October 2010. See Rev. Rul. 2010-24, page 400.

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

Federal short-term, mid-term, and long-term rates are set forth for the month of October 2010. See Rev. Rul. 2010-24, page 400.

## 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 October 2010. See Rev. Rul. 2010-24, page 400.

## 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 October 2010. See Rev. Rul. 2010-24, page 400.

## 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 October 2010.

## Rev. Rul. 2010-24

This revenue ruling provides various prescribed rates for federal income tax purposes for October 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. 2010-24 TABLE 1  
Applicable Federal Rates (AFR) for October 2010

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.41%	.41%	.41%	.41%
110% AFR	.45%	.45%	.45%	.45%
120% AFR	.49%	.49%	.49%	.49%
130% AFR	.53%	.53%	.53%	.53%
<i>Mid-term</i>				
AFR	1.73%	1.72%	1.72%	1.71%
110% AFR	1.90%	1.89%	1.89%	1.88%
120% AFR	2.07%	2.06%	2.05%	2.05%
130% AFR	2.25%	2.24%	2.23%	2.23%
150% AFR	2.60%	2.58%	2.57%	2.57%
175% AFR	3.03%	3.01%	3.00%	2.99%
<i>Long-term</i>				
AFR	3.32%	3.29%	3.28%	3.27%
110% AFR	3.65%	3.62%	3.60%	3.59%
120% AFR	3.99%	3.95%	3.93%	3.92%
130% AFR	4.33%	4.28%	4.26%	4.24%

REV. RUL. 2010-24 TABLE 2  
Adjusted AFR for October 2010

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.44%	.44%	.44%	.44%
Mid-term adjusted AFR	1.30%	1.30%	1.30%	1.30%
Long-term adjusted AFR	3.45%	3.42%	3.41%	3.40%

REV. RUL. 2010-24 TABLE 3  
Rates Under Section 382 for October 2010

Adjusted federal long-term rate for the current month	3.45%
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.)	3.98%

REV. RUL. 2010-24 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for October 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	7.58%
Appropriate percentage for the 30% present value low-income housing credit	3.25%

REV. RUL. 2010-24 TABLE 5

Rate Under Section 7520 for October 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	2.0%
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**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 October 2010. See Rev. Rul. 2010-24, page 400.

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**Section 7520.—Valuation Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2010. See Rev. Rul. 2010-24, page 400.

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**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 October 2010. See Rev. Rul. 2010-24, page 400.

# Part III. Administrative, Procedural, and Miscellaneous

## Production Tax Credit for Refined Coal

### Notice 2010-54

#### SECTION 1. PURPOSE

This notice sets forth interim guidance pending the issuance of regulations relating to the tax credit under § 45 of the Internal Revenue Code (Code) for refined coal. This notice supersedes Notice 2009-90, 2009-51 I.R.B. 859, which also sets forth interim guidance regarding the tax credit under § 45 of the Code for refined coal by republishing the guidance contained in that notice with the following modifications: (1) the definition of refined coal is revised; (2) certain processing of utility-grade coal is permitted to be taken into account in determining whether a qualified emission reduction has been achieved; and (3) the testing protocols for determining emissions reductions are revised. The Service will continue its no rule policy concerning the placed in service date for a facility.

#### SECTION 2. BACKGROUND

Sections 45(c)(7), (d)(8), and (e)(8) of the Code provide definitions and rules relating to the tax credit for refined coal (the refined coal credit). Section 45(e)(8) provides that the refined coal credit increases a taxpayer's credit determined under the other provisions of § 45. The credit is allowed for qualified refined coal (1) produced by the taxpayer at a refined coal production facility during the ten-year period beginning on the date the facility is originally placed in service, and (2) sold by the taxpayer to an unrelated person during that ten-year period.

Sections 45(c)(7), (d)(8), and (e)(8) were added to the Code by sections 710(a), (b)(1), and (b)(2), respectively, of the American Jobs Creation Act of 2004, Pub. L. No. 108-357. These provisions were amended by sections 403(t) and 412(j)(1) and (2) of the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135, and by sections 101 and 108 of the Energy Improvement and Extension Act of 2008, Division B of Pub. L. No. 110-343.

#### SECTION 3. DEFINITIONS, ETC.

The following definitions apply for purposes of this notice:

##### .01 *Refined Coal.*

(1) *In General.* Except as otherwise provided in this section 3.01, the term “refined coal” means fuel that—

(a) is a liquid, gaseous, or solid fuel (including feedstock coal mixed with an additive or additives) produced from coal (including lignite) or high carbon fly ash, including (except to the extent inconsistent with section 3.01(1)(b) of this notice) such fuel used as a feedstock;

(b) is sold by the taxpayer (producer), to an unrelated person, with the reasonable expectation that it will be used for the purpose of producing steam; and

(c) is certified by the taxpayer as resulting (when used in the production of steam) in a qualified emission reduction.

(2) *Steel Industry Fuel.* Refined coal includes steel industry fuel (as defined in § 45(c)(7)(C)) that is produced and sold after September 30, 2008.

(3) *Pre-2009 Facilities.* Refined coal does not include fuel (other than steel industry fuel) that is produced and sold from a facility placed in service before January 1, 2009, unless such fuel is produced in such a manner as to result in an increase of at least 50 percent in the market value of the fuel (excluding any increase caused by materials combined or added during the production process) as compared to the feedstock coal.

.02 *Coal.* The term “coal” means anthracite, bituminous coal, subbituminous coal, and lignite. Coal includes waste coal (that is, usable material that is a byproduct of the previous processing of anthracite, bituminous coal, subbituminous coal, or lignite). Examples of waste coal include fine coal of any of the listed ranks, coal of any of the listed ranks obtained from a refuse bank or slurry dam, anthracite culm, bituminous gob, and lignite waste.

.03 *Comparable Coal.* The term “comparable coal” means, with respect to any feedstock coal, coal that is of the same rank as the feedstock coal and that has an emissions profile comparable to the emissions profile of the feedstock coal.

.04 *Qualified Emissions Reduction.* The term “qualified emissions reduction” means—

(1) in the case of refined coal produced at a facility placed in service after December 31, 2008, a reduction of at least 20 percent of the emissions of nitrogen oxide (NO<sub>x</sub>) and at least 40 percent of the emissions of either sulfur dioxide (SO<sub>2</sub>) or mercury (Hg) released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003; and

(2) in the case of production at a facility placed in service before January 1, 2009, a reduction of at least 20 percent of the emissions of NO<sub>x</sub> and at least 20 percent of the emissions of either SO<sub>2</sub> or Hg released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.

.05 *Refined Coal Production Facility.* The term “refined coal production facility” means—

(a) for purposes of the refined coal credit allowable with respect to steel industry fuel, any facility (or any modification to a facility) which is placed in service before January 1, 2010, and

(b) for purposes of the refined coal credit allowable with respect to refined coal other than steel industry fuel, any facility placed in service after the date of the enactment of the American Jobs Creation Act of 2004 and before January 1, 2010, other than a facility producing fuel for which a credit under § 45K (or under § 29, as in effect on the day before the date of enactment of the Energy Tax Incentives Act of 2005) was allowed for the taxable year or any prior taxable year.

.06 *Related Persons.* Persons are treated as related to each other if they would be treated as a single employer under the regulations prescribed under § 52(b). A corporation that is a member of an affiliated group filing a consolidated

return is treated as selling coal to an unrelated person if the coal is sold to an unrelated person by another member of the affiliated group.

.07 *Placed in Service.* The year in which property is placed in service is determined under the principles of § 1.46-3(d).

#### SECTION 4. COMPUTATION OF CREDIT

.01 *In General.* The refined coal credit for a taxable year is the tentative credit for the year determined under this section 4.01, reduced to the extent provided in sections 4.02 and 4.04 of this notice. If the taxable year is a calendar year, the tentative credit for the taxable year is the tentative credit for the calendar year. If the taxable year includes parts of two calendar years, the tentative credit for the taxable year is the sum of the tentative credits for each partial calendar year included in the taxable year. The tentative credit for any calendar year (or partial calendar year) is the applicable amount per ton of qualified refined coal (1) produced by the taxpayer at a refined coal production facility during the ten-year period beginning on the date the facility is originally placed in service, and (2) sold by the taxpayer to an unrelated person during that ten-year period and during the calendar year (or partial calendar year). The applicable amount for sales of refined coal during a calendar year is \$4.375 multiplied by the inflation adjustment factor for the calendar year to adjust for inflation since 1992.

##### .02 *Limitation of the Credit.*

(1) *In General.* The tentative credit with respect to sales of refined coal during a calendar year is reduced by an amount that bears the same ratio to the tentative credit as the excess reference price for the calendar year bears to \$8.75.

(2) *Excess Reference Price.* The excess reference price for a calendar year is the amount by which (a) the reference price for the calendar year of fuel used as a feedstock exceeds (b) an amount equal to 1.7 multiplied by \$31.90 and further multiplied by the inflation adjustment factor for the calendar year.

.03 *Reference Price and Inflation Adjustment Factor.* The reference price and inflation adjustment factor for a calendar year are provided by notice published in the Internal Revenue Bulletin. See, for

example, Notice 2010-37, 2010-18 I.R.B. 654.

.04 *Reduction for Grants, Tax-Exempt Bonds, Subsidized Energy Financing and Other Credits.* The tentative credit, after the reduction, if any, under section 4.02 of this notice, is reduced by a prescribed percentage if the project received government grants, subsidies, or other credits. The reduction percentage for a tax year is the lesser of 50 percent or the percentage that is determined by dividing the sum for the taxable year and all earlier taxable years of the four items listed below by the aggregate additions to the capital account attributable to the project for the taxable year and all earlier taxable years. Those four items are (1) governmental grants received for the project; (2) proceeds from tax-exempt state or local government bonds used to finance the project; (3) directly and indirectly provided subsidized energy financing under a federal, state or local program in connection with the project and (4) any other credit allowable with respect to any property that is part of the project.

#### SECTION 5. RULES RELATING TO THE AVAILABILITY OF THE REFINED COAL CREDIT

.01 *Leased Refined Coal Production Facility.* The refined coal credit is allowed for qualified refined coal produced and sold to an unrelated person by the taxpayer, without regard to whether the taxpayer owns the refined coal production facility in which the refined coal is produced. Accordingly, a taxpayer that leases or operates a facility owned by another person may claim the credit for refined coal that the taxpayer produces in the facility.

.02 *Addition or Improvement to an Existing Facility.* A refined coal production facility will not be treated as placed in service after October 22, 2004, if more than 20 percent of the facility's total value (the cost of the new property plus the value of the used property) is attributable to property placed in service on or before October 22, 2004. The Service will not issue private letter rulings relating to when a refined coal production facility has been placed in service.

#### SECTION 6. RULES RELATING TO EMISSION REDUCTION

##### .01 *Emission Reductions Attributable to Mining Processes Disregarded.*

(1) *In General.* A qualified emission reduction does not include any reduction attributable to mining processes or processes that would be treated as mining if performed by the mine owner or operator. Accordingly, the feedstock coal for purposes of comparing the emissions released when burning the refined coal to the emissions released when burning the feedstock coal is the product resulting from processes that are treated as mining under section 6.01(2) of this notice and are actually applied by a taxpayer in any part of the taxpayer's process of producing refined coal from coal.

(2) *Processes Treated as Mining.* Any process described in § 613(c)(2), (3), (4)(A), (4)(C), or (4)(I), or that would be described in those provisions if performed by the mine owner or operator, shall be treated as a mining process for purposes of this notice. Section 613(c)(2) provides that the term 'mining' includes not merely the extraction of the ores or minerals from the ground but also the treatment processes considered as mining described in § 613(c)(4) (and the treatment processes necessary or incidental thereto). Section 613(c)(3) provides that extraction of ores or minerals from the ground includes the extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining. Section 613(c)(4)(A) provides, in the case of coal, that cleaning, breaking, sizing, dust allaying, treating to prevent freezing and loading for shipment by a mine owner or operator shall be considered as mining. Section 613(c)(4)(C) provides, in the case of minerals that are customarily sold in the form of a crude mineral product, that sorting, concentrating, sintering, and substantially equivalent processes to bring to shipping grade and form (see § 1.613-4(f)(3)(i)) shall be considered as mining. Section 613(c)(4)(I) provides that the Secretary may prescribe certain treatment processes that will be treated as mining; this authority has been used, for example, to provide that drying to remove free water, provided that such drying does not change the physical or chemical identity or composition of the mineral, is treated as mining (see

§ 1.613-4(f)(5)). Section 613(c)(5) describes treatment processes that are not considered as mining unless they are provided for in § 613(c)(4) or are necessary or incidental to a process provided for in § 613(c)(4). Any cleaning process, such as a process that uses ash separation, dewatering, scrubbing through a centrifugal pump, spiral concentration, gravity concentration, flotation, application of liquid hydrocarbons or alcohol to the surface of the fuel particles or to the feed slurry, provided such cleaning does not change the physical or chemical structure of the coal, and drying to remove free water, provided such drying does not change the physical or chemical identity of the coal, will be considered as mining.

(3) *Exception for Processing Waste Coal.*

(a) *In General.* A cleaning process shall not be treated as a mining process for purposes of applying this section 6.01 to refined coal produced from waste coal at a facility placed in service before January 1, 2010, for the primary purpose of producing refined coal from waste coal. For purposes of this section 6.01(3), waste coal means the waste materials that are separated through ordinary mining processes during the process of producing a merchantable product from the coal extracted from a natural deposit. This section 6.01(3) does not apply with respect to the refined coal produced at a facility during a taxable year unless a verification of waste coal supply, as described in section 6.01(3)(b), is available for such facility.

(b) *Verification of Waste Coal Supply.* The verification of the waste coal supply for a facility required under this section 6.01(3) must contain the following:

(i) The name, address, and telephone number of the qualified individual.

(ii) A statement that the person providing the verification of the waste coal supply is a qualified individual.

(iii) A statement that the coal to be processed by the facility is “waste coal” within the meaning of section 6.01(3)(a).

(iv) A declaration, signed by the qualified individual, in the following form: “Under penalties of perjury, I declare that I have examined this verification statement and, to the best of my knowledge and belief, it is true, correct, and complete.”

(c) *Qualified Individual.* A qualified individual for purposes of this section 6.01(3) is an individual that—

(i) is not related (within the meaning of § 45(e)(4)) to the taxpayer claiming the refined coal credit;

(ii) is properly licensed as a professional engineer; and

(iii) has the requisite qualifications to provide the verification required under this section 6.01(3).

(4) *Exception for Certain Processing of Utility-Grade Coal.*

(a) *In General.* Mining processes do not include a process that satisfies all of the following requirements:

(i) The process modifies utility-grade coal.

(ii) The process consists predominantly of operations that are not ordinarily performed on similar coal by a mine owner or operator.

(iii) The process goes beyond those necessary for the production of utility-grade coal from similar coal.

(b) *Utility-Grade Coal.* Utility-grade coal is coal that, without further processing, satisfies commonly applicable utility specifications for similar coal.

(c) *Similar Coal.* Coals are similar if they are of the same rank, are extracted in the same geographic area, and are customarily sold in the same geographic area (which may differ from the area where they are extracted).

.02 *Basis for Determining Emission Reduction.*

(1) *In General.* Emission reductions are determined by comparing the emissions that result when feedstock coal and refined coal are used to produce the same amounts of useful thermal energy.

(2) *Emissions Resulting from Production Process.* Emissions that result from the process of producing refined coal from feedstock coal are treated for purposes of this section 6.02 as emissions that result when the refined coal is used to produce useful thermal energy. In any case in which waste heat from an activity other than the production of refined coal is used in the process of producing refined coal from feedstock coal, the emissions associated with the waste heat are not treated as emissions that result from such process. The emissions that result when refined coal is produced from feedstock coal must

be determined using a method that accurately measures such emissions.

(3) *Adjustment for Additives.* In any case in which additives are used to produce the refined coal, appropriate adjustment must be made in determining the useful thermal energy produced by the refined coal.

.03 *Emission Reduction Testing Methods.*

(1) *CEMS Field Testing.*

(a) *In General.* The emissions reduction may be determined using continuous emission monitoring system (CEMS) field testing. CEMS field testing is testing that meets all the following requirements:

(i) The boiler used to conduct the test is coal-fired and steam-producing and is of a size and type commonly used in commercial operations.

(ii) Emissions are measured using a CEMS.

(iii) If EPA has promulgated a performance standard that applies at the time of the test to the pollutant emission being measured, the CEMS must conform to that standard.

(iv) Emissions for both the feedstock coal and the refined coal are measured at the same operating conditions and over a period of at least 3 hours during which the boiler is operating at a steady state and at least 90 percent of full load. Operating changes to power plant components that are directly attributable to changing from the feedstock coal to refined coal, such as adjustment to primary and secondary air are not treated as a change in operating conditions for this purpose.

(v) Emissions of SO<sub>2</sub> are measured upstream of any SO<sub>2</sub> scrubber.

(vi) Emissions of Hg are measured upstream of any SO<sub>2</sub> scrubber or Hg control device (such as activated carbon injection).

(vii) Emissions of NO<sub>x</sub> are measured upstream of any NO<sub>x</sub> controls.

(viii) A qualified individual verifies the test results in a manner that satisfies the requirements of section 6.03(1)(b) of this notice.

(b) *Downstream CEMS Testing Permitted.* CEMS testing for emissions of SO<sub>2</sub> downstream of an SO<sub>2</sub> scrubber, of Hg downstream of an SO<sub>2</sub> scrubber or Hg control device, or of NO<sub>x</sub> downstream of any NO<sub>x</sub> controls is permitted if such testing satisfies the requirements of section 6.03(1)(a)(i) through (iv) of this notice



and emissions are measured in accordance with section 6.03(1)(b)(i) or (if applicable) (ii) of this notice.

(i) Except as provided in section 6.03(1)(b)(ii) of this notice, the emissions must be measured in accordance with section 6.03(1)(a)(iv) and the taxpayer must provide verification that any scrubber or control device was operated under the same operating conditions during the test period. Such verification should include, depending on the nature and type of the control device, important control device operating parameters such as, for a scrubber, continuous pressure drop, liquid flow rate, and gas flow rate, and for an electrostatic precipitator, continuous secondary voltage and current and number of fields in operation.

(ii) If, during the 5-year period immediately preceding the date that the plant began burning the refined coal, the plant burned, throughout any 24-consecutive-month period selected by the taxpayer (the base period), feedstock coal from the same source and of the same rank as the feedstock coal used to produce the refined coal, emissions of SO<sub>2</sub> or NO<sub>x</sub> may be measured by treating the average emissions at which the plant actually emitted the pollutant during the base period as the emissions for the feedstock coal and the average emissions at which the plant actually emitted the pollutant during a 6-month period in which the plant burned the refined coal as emissions for the refined coal. Emissions must be determined for purposes of this section 6.03(1)(b)(ii) without regard to any reduction attributable to physical improvements or replacements of pollution control devices or other physical changes to the plant made after the beginning of the base period.

(c) *Verification of Test Results.* A verification of test results for purposes of this section 6.03(1) must contain the following:

(i) The name, address, and telephone number of the qualified individual.

(ii) A statement that the person providing the verification of test results is a qualified individual.

(iii) A statement that the testing satisfied all the requirements specified in either section 6.03(1)(a)(i) through (vii) or (if applicable) section 6.03(1)(a)(i) through (iv) and (b) of this notice.

(iv) In the case of any changes to operating conditions permitted under section

6.03(1)(a)(iv) of this notice, a statement that such operating changes are directly attributable to the change in fuel and are consistent with good air pollution control practices.

(v) A statement that the amount of the emissions reduction was determined in accordance with the provisions of section 6.01 and section 6.02 of this notice.

(vi) A declaration, signed by the qualified individual, in the following form: "Under penalties of perjury, I declare that I have examined this verification statement and, to the best of my knowledge and belief, it is true, correct, and complete."

(d) *Qualified Individual.* A qualified individual for purposes of this section 6.03(1) is an individual that—

(i) is not related (within the meaning of § 45(e)(4)) to the taxpayer claiming the refined coal credit;

(ii) is properly licensed as a professional engineer; and

(iii) has the requisite qualifications to provide the verification required under this section 6.03(1).

(e) *Reliance Permitted.* If CEMS field testing is used to determine the emissions reduction, the Service will not, on examination, require any additional proof of the emission reduction achieved. The Service may, however, require the taxpayer to establish that the testing used qualifies as CEMS field testing.

(2) *Other Testing Methods.* Methods other than CEMS field testing may be used to determine the emissions reduction. If a method other than CEMS field testing is used, the Service may require the taxpayer to provide additional proof that the emission reduction has been achieved. Permissible methods include the following:

(a) *Demonstration Pilot-Scale Combustion Furnace.* A testing method using a demonstration pilot-scale combustion furnace if it is established that the method accurately measures the emissions reduction that would be achieved in a boiler described in section 6.03(1)(a)(i) of this notice and a qualified individual verifies the test results in a manner that satisfies the requirements of section 6.03(1)(c)(i), (ii), (v), and (vi) of this notice.

(b) *Laboratory Analysis of the Feedstock Coal and the Refined Coal.* A laboratory analysis that complies with a currently applicable EPA or ASTM standard and is

permitted under section 6.03(2)(b)(i) or (ii) of this notice.

(i) Laboratory analysis may be used to establish that the requisite emissions reduction for SO<sub>2</sub> or Hg will be achieved if the analysis shows that the sulfur(S) or Hg content of the amount of refined coal necessary to produce an amount of useful energy has been reduced by at least 20 percent (40 percent, in the case of facilities placed in service after December 31, 2008) in comparison to the S or Hg content of the amount of feedstock coal necessary to produce the same amount of useful energy, excluding any dilution caused by materials combined or added during the production process.

(ii) Laboratory analysis, including proximate and ultimate analysis, if combined with appropriate analytical methods, including Computational Fluid Dynamics (CFD) modeling, may be used to show that the requisite reduction in NO<sub>x</sub> will be achieved when the refined coal is burned. Such analytical methods must be based on sufficient combustion emission data to permit a qualified individual, as defined in section 6.03(1) of this notice, to reliably conclude that the emission reduction will be achieved.

(3) *In General.* A taxpayer may show qualified emission reduction of any pollutant by any of the testing methods that is described as a permissible method of testing the emission reduction of that pollutant in this section 6.03.

#### .04 *Frequency of Testing.*

(1) *In General.* A taxpayer may establish that a qualified emissions reduction determined under section 6.03 of this notice applies to production from a facility by a determination or redetermination that is valid at the time the production occurs. A determination or redetermination is valid for the period beginning on the date of the determination or redetermination and ending with the occurrence of the earliest of the following events: (i) The lapse of six months from the date of such determination or redetermination.

(ii) A change in the source or rank of feedstock coal that occurs after the date of such determination or redetermination.

(iii) A change in the process of producing refined coal from the feedstock coal that occurs after the date of such determination or redetermination.

(2) *Redetermination Methods.* In the case of a redetermination required because of a change in the process of producing refined coal from the feedstock coal, the redetermination required under this section 6.04 must use a method that meets the requirements of section 6.03 of this notice. In any other case, the redetermination requirement may be satisfied by laboratory analysis establishing that—

(a) The S or Hg content of the amount of refined coal necessary to produce an amount of useful energy has been reduced by at least 20 percent (40 percent, in the case of facilities placed in service after December 31, 2008) in comparison to the S or Hg content of the amount of feedstock coal necessary to produce the same amount of useful energy, excluding any dilution caused by materials combined or added during the production process; or

(b) The S and Hg content of both the feedstock coal and the refined coal do not vary by more than ten percent from the S and Hg content of the feedstock coal and refined coal used in the most recent determination that meets the requirements of section 6.03 of this notice.

.05 *Certification of Emissions Reduction.* The certification requirement of section 3.01(1)(c) of this notice is satisfied with respect to fuel for which the refined coal credit is claimed only if the taxpayer attaches to its tax return on which the credit is claimed a certification that contains the following:

(1) A statement that the fuel will result in a qualified emissions reduction when used in the production of steam.

(2) A statement indicating whether CEMS field testing was used to determine the emissions reduction.

(3) If CEMS field testing was not used to determine the emissions reduction, a description of the method used.

(4) A statement that the emissions reduction was determined or redetermined within the six months preceding the production of the fuel and that there have been no changes in the source or rank of feedstock coal used or in the process of producing refined coal from the feedstock coal since the emissions reduction was determined or was most recently redetermined.

(5) A declaration signed by the taxpayer in the following form: “Under penalties of perjury, I declare that I have examined this certification and to the best of my knowl-

edge and belief, it is true, correct, and complete.”

## SECTION 7. RECORDKEEPING

Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. The books and records required by § 6001 must be kept at all times available for inspection by authorized internal revenue officers or employees, and must be retained so long as the contents thereof may become material in the administration of any internal revenue law. In order to satisfy the recordkeeping requirements of § 6001 and the regulations thereunder, a taxpayer that claims the refined coal credit must retain adequate books and records so that, for any taxable year, it can be verified from those books and records that the property with respect to which the credit is claimed satisfies the applicable requirements of § 45 and this notice.

## SECTION 8. REQUEST FOR COMMENTS

The IRS and the Treasury Department invite comments concerning section 6.03 of this notice relating to emission reduction testing methods. Comments should refer to Notice 2010–54 and be submitted to:

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2010–54)  
Room 5203  
P. O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier’s Desk  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, DC 20224  
Attn: CC:PA:LPD:PR  
(Notice 2010–54)

Alternatively, taxpayers may submit comments electronically to [notice.comments@irs.counsel.treas.gov](mailto:notice.comments@irs.counsel.treas.gov).

Please include “Notice 2010–54” in the subject line of any electronic communications.

All comments will be available for public inspection and copying.

## SECTION 9. EFFECTIVE DATE

This notice is effective for refined coal produced after September 16, 2010. Taxpayers may apply the provisions of this notice with respect to refined coal produced on or before September 16, 2010.

## SECTION 10. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–2158.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this notice is in section 6 of this notice. This information will be used by the Service to verify that the taxpayer is eligible for the production tax credit for refined coal. The collection of information is required to obtain a benefit. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting burden is 1500 hours.

The estimated annual burden per respondent varies from 10 to 20 hours, depending on individual circumstances, with an estimated average of 15 hours. The estimated number of respondents is 100.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. § 6103.

## SECTION 11. DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Philip Tiegerman of the Office of Associate Chief Counsel (Passthroughs and

Special Industries). However, other personnel from the IRS and Treasury participated in its development. For further information regarding this notice, contact Mr. Tiegerman at (202) 622-3110.

## Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

### Notice 2010-61

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code as in effect for plan years beginning before 2008. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), the 24-month average segment rates, and the funding transitional segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest

rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the minimum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007.

#### CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004 and by the Pension Protection Act of 2006 (PPA), provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 through 2007 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004-34, 2004-1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004-34 continues to apply in determining that rate. See Notice 2006-75, 2006-2 C.B. 366.

The composite corporate bond rate for August 2010 is 5.16 percent. Pursuant to Notice 2004-34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

For Plan Years Beginning in		Corporate Bond Weighted Average	Permissible Range	
Month	Year		90%	100%
September	2010	6.24	5.62	6.24

#### YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates

("segment rates"), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. For plan years beginning in 2008 and 2009, a transitional rule under § 430(h)(2)(G) provides that the segment rates are blended with the corporate bond weighted average as specified above. An election may be made under § 430(h)(2)(G)(iv) to use the segment rates without applying the transitional rule.

Notice 2007-81, 2007-2 C.B. 899, provides guidelines for determining the

monthly corporate bond yield curve, the 24-month average corporate bond segment rates, and the funding transitional segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007-81, the monthly corporate bond yield curve derived from August 2010 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of August 2010 are, respectively, 1.81, 4.81, and 5.88. The three 24-month average corporate bond segment rates applicable for September 2010 under the election of § 430(h)(2)(G)(iv) are as follows:

First Segment	Second Segment	Third Segment
3.78	6.31	6.57

The transitional segment rates under § 430(h)(2)(G) applicable for September 2010, taking into account the corporate bond

weighted average of 6.24 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2009	4.60	6.29	6.46

The transitional rule of § 430(h)(2)(G) does not apply to plan years starting in 2010. Therefore, for a plan year starting in 2010 with a lookback month to September 2010, the funding segment rates are the three 24-month average corporate bond segment rates applicable for September 2010, listed above without blending for the transitional period.

### 30-YEAR TREASURY SECURITIES INTEREST RATES

Section 417(e)(3)(A)(ii)(II) (prior to amendment by PPA) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date

of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)-1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual rate of interest on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury securities for August 2010 is 3.80 percent. The Service has determined this rate as the average of the yield on the 30-year Treasury bond maturing in May 2040 determined each day through August 11, 2010, and the yield on the 30-year Treasury bond maturing in August 2040 determined each day for the balance of the month.

Generally for plan years beginning after 2007, § 431 specifies the mini-

imum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in section 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The following rates were determined for plan years beginning in the month shown below.

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range		
Month	Year		90%	to	105%
September	2010	4.30	3.87		4.52

### MINIMUM PRESENT VALUE SEGMENT RATES

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to

a 24-month average. For plan years beginning in 2008 through 2011, the applicable interest rates are the monthly spot segment rates blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007-81 provides guidelines for determin-

ing the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for August 2010, taking into account the August 2010 30-year Treasury rate of 3.80 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2009	3.00	4.20	4.63
2010	2.61	4.41	5.05
2011	2.21	4.61	5.46

### DRAFTING INFORMATION

The principal author of this notice is Tony Montanaro of the Employee Plans,

Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov).

**Table I**  
 Monthly Yield Curve for August 2010  
 Derived from August 2010 Data

<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>
0.5	0.82	20.5	5.57	40.5	5.91	60.5	6.04	80.5	6.10
1.0	0.98	21.0	5.58	41.0	5.92	61.0	6.04	81.0	6.10
1.5	1.16	21.5	5.60	41.5	5.92	61.5	6.04	81.5	6.10
2.0	1.38	22.0	5.61	42.0	5.93	62.0	6.04	82.0	6.10
2.5	1.62	22.5	5.63	42.5	5.93	62.5	6.05	82.5	6.10
3.0	1.89	23.0	5.64	43.0	5.94	63.0	6.05	83.0	6.11
3.5	2.17	23.5	5.65	43.5	5.94	63.5	6.05	83.5	6.11
4.0	2.44	24.0	5.66	44.0	5.94	64.0	6.05	84.0	6.11
4.5	2.69	24.5	5.68	44.5	5.95	64.5	6.05	84.5	6.11
5.0	2.94	25.0	5.69	45.0	5.95	65.0	6.06	85.0	6.11
5.5	3.17	25.5	5.70	45.5	5.96	65.5	6.06	85.5	6.11
6.0	3.38	26.0	5.71	46.0	5.96	66.0	6.06	86.0	6.11
6.5	3.58	26.5	5.72	46.5	5.96	66.5	6.06	86.5	6.11
7.0	3.76	27.0	5.73	47.0	5.97	67.0	6.06	87.0	6.11
7.5	3.93	27.5	5.74	47.5	5.97	67.5	6.06	87.5	6.11
8.0	4.09	28.0	5.75	48.0	5.97	68.0	6.07	88.0	6.12
8.5	4.23	28.5	5.76	48.5	5.98	68.5	6.07	88.5	6.12
9.0	4.36	29.0	5.77	49.0	5.98	69.0	6.07	89.0	6.12
9.5	4.49	29.5	5.78	49.5	5.98	69.5	6.07	89.5	6.12
10.0	4.60	30.0	5.78	50.0	5.99	70.0	6.07	90.0	6.12
10.5	4.70	30.5	5.79	50.5	5.99	70.5	6.07	90.5	6.12
11.0	4.79	31.0	5.80	51.0	5.99	71.0	6.07	91.0	6.12
11.5	4.88	31.5	5.81	51.5	5.99	71.5	6.08	91.5	6.12
12.0	4.95	32.0	5.82	52.0	6.00	72.0	6.08	92.0	6.12
12.5	5.02	32.5	5.82	52.5	6.00	72.5	6.08	92.5	6.12
13.0	5.09	33.0	5.83	53.0	6.00	73.0	6.08	93.0	6.13
13.5	5.14	33.5	5.84	53.5	6.01	73.5	6.08	93.5	6.13
14.0	5.19	34.0	5.84	54.0	6.01	74.0	6.08	94.0	6.13
14.5	5.24	34.5	5.85	54.5	6.01	74.5	6.08	94.5	6.13
15.0	5.28	35.0	5.86	55.0	6.01	75.0	6.09	95.0	6.13
15.5	5.32	35.5	5.86	55.5	6.02	75.5	6.09	95.5	6.13
16.0	5.36	36.0	5.87	56.0	6.02	76.0	6.09	96.0	6.13
16.5	5.39	36.5	5.87	56.5	6.02	76.5	6.09	96.5	6.13
17.0	5.42	37.0	5.88	57.0	6.02	77.0	6.09	97.0	6.13
17.5	5.44	37.5	5.89	57.5	6.02	77.5	6.09	97.5	6.13
18.0	5.47	38.0	5.89	58.0	6.03	78.0	6.09	98.0	6.13
18.5	5.49	38.5	5.90	58.5	6.03	78.5	6.10	98.5	6.13
19.0	5.51	39.0	5.90	59.0	6.03	79.0	6.10	99.0	6.13
19.5	5.53	39.5	5.91	59.5	6.03	79.5	6.10	99.5	6.14
20.0	5.55	40.0	5.91	60.0	6.04	80.0	6.10	100.0	6.14

# Interim Guidance Under the Codification of the Economic Substance Doctrine and Related Provisions in the Health Care and Education Reconciliation Act of 2010

## Notice 2010-62

### PURPOSE

This notice provides interim guidance regarding the codification of the economic substance doctrine under section 7701(o) and the related amendments to the penalties under sections 6662, 6662A, 6664, and 6676 by section 1409 of the Health Care and Education Reconciliation Act of 2010 (Act), Pub. L. No. 111-152. The notice applies with respect to transactions entered into on or after March 31, 2010, which is the effective date for the amendments made by section 1409 of the Act.

### BACKGROUND

Section 1409 of the Act added new section 7701(o) to the Code. Section 7701(o)(1) provides that, in the case of any transaction to which the economic substance doctrine is relevant, the transaction shall be treated as having economic substance only if (i) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position, and (ii) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into the transaction. Section 7701(o)(5)(A) states that the term "economic substance doctrine" means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

Section 7701(o)(5)(C) states that the determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if section 7701(o) had never been enacted. With respect to individuals, however, section 7701(o)(5)(B) states that the two-prong analysis in section 7701(o)(1) shall apply only to a transaction entered into in connection with a trade or business or an activity engaged in for the

production of income. In addition, section 7701(o)(5)(D) states that the term "transaction" as used in section 7701(o) includes a series of transactions.

Section 7701(o)(2)(A) provides that a transaction's potential for profit shall be taken into account in determining whether the requirements of section 7701(o)(1) are met only if the present value of the reasonably expected pre-tax profit is substantial in relation to the present value of the claimed net tax benefits. For purposes of computing pre-tax profit, section 7701(o)(2)(B) provides that the Secretary shall issue regulations treating foreign taxes as a pre-tax expense in appropriate cases.

The Act also added section 6662(b)(6), which provides that the accuracy-related penalty imposed under section 6662(a) applies to any underpayment attributable to any disallowance of a claimed tax benefit because of a transaction lacking economic substance (within the meaning of section 7701(o)) or failing to meet any similar rule of law (collectively a section 6662(b)(6) transaction). The Act also added section 6662(i), which increases the accuracy-related penalty from 20 to 40 percent for any portion of an underpayment attributable to one or more section 6662(b)(6) transactions with respect to which the relevant facts affecting the tax treatment are not adequately disclosed in the return or in a statement attached to the return. Furthermore, new section 6662(i)(3) provides that certain amended returns or any supplement to a return shall not be taken into consideration for purposes of section 6662(i).

The Act amended section 6664(c) so that the reasonable cause exception for underpayments found in section 6664(c)(1) shall not apply to any portion of any underpayment attributable to a section 6662(b)(6) transaction. The Act similarly amended section 6664(d) so that the reasonable cause exception found in section 6664(d)(1) shall not apply to any reportable transaction understatement (within the meaning of section 6662A(b)) attributable to a section 6662(b)(6) transaction. The Act also amended section 6676 so that any excessive amount (within the meaning of section 6676(b)) attributable to any section 6662(b)(6) transaction shall not be treated as having a reasonable basis.

## APPLICATION OF THE ECONOMIC SUBSTANCE DOCTRINE WITH RESPECT TO TRANSACTIONS ENTERED INTO AFTER THE EFFECTIVE DATE OF THE ACT

### A. Application of the Conjunctive Test

For transactions entered into on or after March 31, 2010, to which the economic substance doctrine is relevant, section 7701(o)(1) mandates the use of a conjunctive two-prong test to determine whether a transaction shall be treated as having economic substance. The first prong, found in section 7701(o)(1)(A), requires that the transaction change in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position. The second prong, found in section 7701(o)(1)(B), requires that the taxpayer have a substantial purpose (apart from Federal income tax effects) for entering into the transaction.

The IRS will continue to rely on relevant case law under the common-law economic substance doctrine in applying the two-prong conjunctive test in section 7701(o)(1). Accordingly, in determining whether a transaction sufficiently affects the taxpayer's economic position to satisfy the requirements of section 7701(o)(1)(A), the IRS will apply cases under the common-law economic substance doctrine (as identified in section 7701(o)(5)(A)) pertaining to whether the tax benefits of a transaction are not allowable because the transaction does not satisfy the economic substance prong of the economic substance doctrine. Similarly, in determining whether a transaction has a sufficient non-tax purpose to satisfy the requirements of section 7701(o)(1)(B), the IRS will apply cases under the common-law economic substance doctrine pertaining to whether the tax benefits of a transaction are not allowable because the transaction lacks a business purpose.

The IRS will challenge taxpayers who seek to rely on prior case law under the common-law economic substance doctrine for the proposition that a transaction will be treated as having economic substance merely because it satisfies either section 7701(o)(1)(A) (or its common-law corollary) or section 7701(o)(1)(B) (or its common-law corollary). For all transactions subject to section 1409 of the Act that otherwise would have been subject to a com-

mon-law economic substance analysis that treated a transaction as having economic substance merely because it satisfies either section 7701(o)(1)(A) (or its common-law corollary) or section 7701(o)(1)(B) (or its common-law corollary) the IRS will apply a two-prong conjunctive test consistent with section 7701(o).

#### B. Determination of Economic Substance Transactions

Section 7701(o)(5)(C) provides that the determination of whether a transaction is subject to the economic substance doctrine shall be made in the same manner as if section 7701(o) had never been enacted. In addition, section 7701(o)(1) only applies in the case of any transaction to which the economic substance doctrine is relevant. Consistent with these provisions, the IRS will continue to analyze when the economic substance doctrine will apply in the same fashion as it did prior to the enactment of section 7701(o). If authorities, prior to the enactment of section 7701(o), provided that the economic substance doctrine was not relevant to whether certain tax benefits are allowable, the IRS will continue to take the position that the economic substance doctrine is not relevant to whether those tax benefits are allowable. The IRS anticipates that the case law regarding the circumstances in which the economic substance doctrine is relevant will continue to develop. Consistent with section 7701(o)(5)(C), codification of the economic substance doctrine should not affect the ongoing development of authorities on this issue. The Treasury Department and the IRS do not intend to issue general administrative guidance regarding the types of transactions to which the economic substance doctrine either applies or does not apply.

#### C. Calculating Net Present Value of the Reasonably Expected Pre-tax Profit.

In determining whether the requirements of section 7701(o)(1)(A) and (B) are met, the IRS will take into account the taxpayer's profit motive only if the present value of the reasonably expected pre-tax profit is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected for Federal income

tax purposes. In performing this calculation, the IRS will apply existing relevant case law and other published guidance.

#### D. Treatment of Foreign Taxes as Expenses in Appropriate Cases.

Section 7701(o)(2)(B) provides that the Secretary shall issue regulations requiring foreign taxes to be treated as expenses in determining pre-tax profit in appropriate cases. The Treasury Department and the IRS intend to issue regulations pursuant to section 7701(o)(2)(B). In the interim, the enactment of the provision does not restrict the ability of the courts to consider the appropriate treatment of foreign taxes in economic substance cases.

#### ACCURACY-RELATED PENALTIES

Unless the transaction is a reportable transaction, as defined in Treas. Reg. § 1.6011-4(b), the adequate disclosure requirements of section 6662(i) will be satisfied if a taxpayer adequately discloses on a timely filed original return (determined with regard to extensions) or a qualified amended return (as defined under Treas. Reg. § 1.6664-2(c)(3)) the relevant facts affecting the tax treatment of the transaction. If a disclosure would be considered adequate for purposes of section 6662(d)(2)(B) (without regard to section 6662(d)(2)(C)) prior to the enactment of section 1409 of the Act, then it will be deemed to be adequate for purposes of section 6662(i). The disclosure will be considered adequate only if it is made on a Form 8275 or 8275-R, or as otherwise prescribed in forms, publications, or other guidance subsequently published by the IRS consistent with the instructions and other guidance associated with those subsequent forms, publications, or other guidance. Disclosures made consistent with the terms of Rev. Proc. 94-69 also will be taken into account for purposes of section 6662(i). If a transaction lacking economic substance is a reportable transaction, as defined in Treas. Reg. § 1.6011-4(b), the adequate disclosure requirement under section 6662(i)(2) will be satisfied only if the taxpayer meets the disclosure requirements described earlier in this paragraph *and* the disclosure requirements under the section 6011 regulations. Similarly, a taxpayer will not meet the disclosure requirements for a

reportable transaction under the section 6011 regulations by only attaching Form 8275 or 8275-R to an original or qualified amended return.

#### EFFECT ON OTHER DOCUMENTS

The IRS will not issue a private letter ruling or determination letter pursuant to section 3.02 (1) of Rev. Proc. 2010-3, 2010-1 I.R.B. 110 (or subsequent guidance), regarding whether the economic substance doctrine is relevant to any transaction or whether any transaction complies with the requirements of section 7701(o). Accordingly, Rev. Proc. 2010-3 is modified.

#### REQUEST FOR COMMENTS

The IRS is interested in comments concerning the disclosure requirements set forth in this notice with regard to section 6662(i), especially with regard to the interplay between Rev. Proc. 94-69, proposed Schedule UTP, and the LMSB compliance assurance process (CAP) program. Interested parties are invited to submit comments on this notice by December 3, 2010. Comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2010-62), Room 5205, P.O. Box 7604, Ben Franklin Station, Washington, DC 20224. Alternatively, comments may be hand-delivered Monday through Friday between the hours of 8:00 a.m. to 4:00 p.m. to: CC:PA:LPD:PR (Notice 2010-62), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Comments may also be submitted electronically via the following e-mail address: [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov). Please include Notice 2010-62 in the subject line of any electronic submissions.

#### EFFECTIVE DATE

This notice is effective with respect to transactions entered into on or after March 31, 2010.

#### CONTACT INFORMATION

The principal author of this notice is James G. Hartford of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact James G. Hartford at (202) 622-7950

(not a toll-free call). For further information with respect to the treatment of foreign taxes as expenses, contact Suzanne M. Walsh at (202) 622-3850 (not a toll-free call).

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*26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.*  
(Also Part 1, §§ 23, 36C, 137.)

## Rev. Proc. 2010-31

### SECTION 1. PURPOSE

This revenue procedure provides safe harbors for determining the finality of foreign adoptions for purposes of the adoption credit under § 23 of the Internal Revenue Code, redesignated § 36C after 2009, and the exclusion for employer reimbursements under § 137. A taxpayer within the scope of this revenue procedure who meets the requirements of a safe harbor described in section 4 may rely on that safe harbor to determine when a foreign adoption of an eligible child is final.

Rev. Proc. 2005-31, 2005-1 C.B. 1374, provides guidance to taxpayers on the finality of foreign adoptions but does not apply to adoptions governed by the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention) and subject to the Intercountry Adoption Act of 2000, Pub. L. 106-279, 114 Stat. 825 (IAA), 42 U.S.C. §§ 14901-14954 (Convention adoptions). The Convention became effective in the United States on April 1, 2008. This revenue procedure provides taxpayers with safe harbors for claiming the adoption credit and exclusion for Convention adoptions, and guidance on filing amended returns to claim the credit or exclusion for Convention adoptions that became final in 2008 or 2009. Rev. Proc. 2005-31 continues to apply to foreign adoptions not governed by the Convention (non-Convention adoptions).

### SECTION 2. BACKGROUND

.01 Section 23 allows a taxpayer to claim a credit for qualified adoption expenses (QAE) for the adoption of an eligible child. Section 10909 of the Patient Protection and Affordable

Care Act, Pub. L. 111-148, 124 Stat. 119, redesignated § 23 as § 36C and made the credit refundable for taxable years beginning in 2010 and 2011. For convenience, references to § 23 in this revenue procedure, in general, also apply to § 36C.

.02 Section 137 allows an employee to exclude from gross income QAE reimbursed under an employer-provided adoption assistance program.

.03 Section 23(d)(1) and Notice 97-9, 1997-1 C.B. 365, define QAE as reasonable and necessary adoption fees, court costs, attorney's fees, traveling expenses (including amounts expended for meals and lodging) while away from home, and other expenses directly related to, and for the principal purpose of, the legal adoption of an eligible child by the taxpayer.

.04 Section 23(d)(2) provides that an eligible child is an individual who has not attained age 18 or who is physically or mentally incapable of caring for himself. Under § 23(d)(1)(C), a stepchild is not an eligible child.

.05 Section 23(a) provides the general rule governing when the credit for QAE is allowed. If the adoption is not final in the taxable year a taxpayer pays or incurs QAE, the credit is allowable for those expenses in the next taxable year. Section 23(a)(2)(A). For QAE paid or incurred during or after the taxable year in which the adoption is final, the credit is allowable in the taxable year in which the QAE are paid or incurred. Section 23(a)(2)(B).

.06 Section 23(e) provides special rules governing when the credit for foreign adoptions is allowed: (1) the credit is allowable only if the adoption becomes final; and (2) QAE paid or incurred in any taxable year before the taxable year in which the adoption becomes final are treated as paid or incurred in the taxable year in which the adoption becomes final. Rules similar to § 23(e) apply under § 137(e) for purposes of the exclusion for employer-provided adoption assistance.

.07 For purposes of this revenue procedure, a Convention adoption means the adoption, on or after the Convention effective date, of an alien child habitually resident in a Convention country by a United States citizen habitually resident in the United States, when in connection with the adoption the child has moved, or will move, from the Convention country to

the United States. See 8 C.F.R. § 204.301; § 3(10) of the IAA, 42 U.S.C. § 14902(10). See also Rev. Proc. 2005-31, section 2.05. An adoption may be a Convention adoption only if a prospective adoptive parent has filed an Application for Determination of Suitability to Adopt a Child from a Convention Country (Form 1-800A or successor) with the Department of State on or after April 1, 2008. See 8 C.F.R. §§ 204.300(a) and (b), and 301.

.08 A Convention country is a country that is party to the Convention and for which the Convention is in force. See § 3(12) of the IAA, 42 U.S.C. § 14902(3)(12); 8 C.F.R. § 204.301; and 22 C.F.R. § 96.2.

.09 Section 301(a)(1) of the IAA, 42 U.S.C. § 14931(a)(1), requires the Secretary of State to issue a certificate for each Convention adoption by a U.S. domiciled citizen of a child immigrating to the United States. The Secretary of State issues two types of certificates for Convention adoptions, IHAC (Hague Adoption Certificate) and IHCC (Hague Custody Certificate). The Secretary of State issues the certificates if the Secretary (1) receives appropriate notification from the central authority of the child's country of origin, and (2) has verified that the requirements of the Convention and the IAA have been met for the adoption.

.10 Section 301(a)(2) of the IAA, 42 U.S.C. § 14931(a)(2), provides that if a certificate (IHAC or IHCC) is appended to an original adoption decree, Federal and state agencies, courts, and other public and private persons and entities must treat the certificate as conclusive evidence of the facts certified.

.11 Section 301(b) of the IAA, 42 U.S.C. § 14931(b), provides that a final adoption in another Convention country, certified by the Secretary of State pursuant to § 301(a) of the IAA (IHAC), must be recognized as a final valid adoption for purposes of all Federal, state, and local laws of the United States.

.12 Section 301(c) of the IAA, 42 U.S.C. § 14931(c), provides that a home-state jurisdiction may not declare an adoption final for a child who has entered the United States from another Convention country unless the Secretary of State has issued an IHCC.

.13 General information about foreign adoptions and the Convention can be ac-



cessed through the Department of State website at <http://www.adoption.state.gov>.

### SECTION 3. SCOPE

This revenue procedure applies to taxpayers who claim the adoption credit or exclusion for QAE paid or incurred for a Convention adoption of a child who is not a citizen or resident of the United States at the time the adoption process commences and who is immigrating to the United States. This revenue procedure does not apply to non-Convention adoptions within the scope of Rev. Proc. 2005-31 or to the adoption of a child who is a citizen or resident of the United States at the time the adoption process commences.

### SECTION 4. FINALITY OF CONVENTION ADOPTIONS

*.01 Adoption finalized in another Convention country.* If a taxpayer is within the

scope of this revenue procedure, the Internal Revenue Service will not challenge the taxpayer's treatment of an adoption that is finalized in another Convention country (sending country) as final in the taxable year that either:

(1) The sending country enters a final decree of adoption, or

(2) The Secretary of State issues a certificate under § 301(a) of the IAA (IHAC).

*.02 Adoption finalized in the United States.* If a taxpayer is within the scope of this revenue procedure, the Service will not challenge the taxpayer's treatment of an adoption of a child who has entered the United States for the purpose of adoption subject to § 301(c) of the IAA (IHCC) as final in the taxable year that a state court enters a final decree of adoption.

### SECTION 5. EFFECTIVE DATE

This revenue procedure is effective September 29, 2010. A taxpayer may

file an amended return to claim the adoption credit for QAE paid in taxable year 2008 or 2009, if the period of limitation under § 6511 has not expired, for a Convention adoption that became final within the meaning of section 4 of this revenue procedure during the period beginning on April 1, 2008, and ending on December 31, 2009.

### DRAFTING AND OTHER INFORMATION

The principal author of this revenue procedure is Marilyn E. Brookens of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this announcement, contact Ms. Brookens at (202) 622-4920 (not a toll-free call).

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking and Notice of Public Hearing

### Requirement of a Statement Disclosing Uncertain Tax Positions

#### REG-119046-10

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations allowing the IRS to require corporations to file a schedule disclosing uncertain tax positions related to the tax return as required by the IRS. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 12, 2010. Outlines of topics to be discussed at the public hearing scheduled for October 15, 2010, at 10 a.m., must be received by October 12, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-119046-10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 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-119046-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-119046-10). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kathryn Zuba at (202) 622-3400; concerning submissions of comments, the public hearing, and to be placed on the building access list to attend the public

hearing, Oluwafunmilayo Taylor of the Publications and Regulations Branch at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 6012 relating to the returns of income corporations are required to file. Section 6011 provides that persons liable for a tax imposed by Title 26 shall make a return when required by regulations prescribed by the Secretary of the Treasury according to the forms and regulations prescribed by the Secretary. Treasury Regulation §1.6011-1 requires every person liable for income tax to make such returns as are required by regulation. Section 6012 requires corporations subject to an income tax to make a return with respect to that tax. Treasury Regulation §1.6012-2 sets out the corporations that are required to file returns and the form those returns must take.

In Announcement 2010-9, 2010-7 I.R.B. 408, and Announcement 2010-17, 2010-13 I.R.B. 515, the IRS announced it was developing a schedule requiring certain taxpayers to report uncertain tax positions on their tax returns. The IRS released the draft schedule, Schedule UTP, accompanied by draft instructions that provide a further explanation of the IRS's proposal in conjunction with Announcement 2010-30, 2010-19 I.R.B. 668. That announcement invited public comment by June 1, 2010, on the draft schedule and instructions, which would be finalized after the IRS received and considered the comments regarding the overall proposal and the draft schedule and instructions.

The draft schedule and instructions provide that, beginning with the 2010 tax year, certain corporations with both uncertain tax positions and assets equal to or exceeding \$10 million will be required to file Schedule UTP if they or a related party issued audited financial statements. The draft schedule and instructions stated that, for 2010 tax years, the IRS will require corporations filing the following returns to file Schedule UTP: Form 1120, *U.S. Corporation Income Tax Return*; Form 1120L,

*U.S. Life Insurance Company Income Tax Return*; Form 1120PC, *U.S. Property and Casualty Insurance Company Income Tax Return*; and Form 1120F, *U.S. Income Tax Return of a Foreign Corporation*. The draft schedule and instructions do not require a Schedule UTP from any other Form 1120 series filers, pass-through entities, or tax-exempt organizations in 2010 tax years.

A substantial number of public comments have been received regarding the draft schedule. The IRS and Treasury Department are currently reviewing the comments and anticipate publishing a final Schedule UTP in sufficient time to allow taxpayers to comply with the proposed effective date of these regulations.

##### Explanation of Provisions

These proposed regulations require corporations to file a Schedule UTP consistent with the forms, instructions, and other appropriate guidance provided by the IRS. As explained in Announcement 2010-9, the United States federal income tax system relies on taxpayers to make a self-assessment of tax and to file returns that show the facts upon which tax liability may be determined and assessed. Section 601.103 of the Procedure and Administration Regulations. To discharge its obligation to fairly and uniformly administer the tax laws, the IRS must be able to quickly and efficiently identify those returns, and the issues underlying those returns, that present a significant risk of noncompliance with the Internal Revenue Code.

Existing corporate tax returns do not currently require that taxpayers separately identify and explain the uncertain tax positions that are identified in the process of complying with generally accepted accounting principles. Instead, to identify uncertain tax positions the IRS must select a return for audit and expend a substantial amount of effort by revenue agents to determine what uncertain tax positions might relate to the return.

Corporations that prepare financial statements are required by generally accepted accounting principles to identify and quantify all uncertain tax positions as described in Financial Accounting Standards Board, *Interpretation No. 48, Ac-*

*counting for Uncertainty in Income Taxes* (June 2006) (FIN 48). FIN 48 is now codified in FASB ASC Topic 740–10 Income Taxes, Income Taxes, Accounting Standards Codification Subtopic 740–10 (Fin. Accounting Standards Bd. 2010). Other corporations that file returns of income in the United States may be subject to other requirements regarding accounting for uncertain tax positions. For example, corporations may be subject to other generally accepted accounting standards, including International Financial Reporting Standards and country-specific generally accepted accounting standards.

Congress, through the Internal Revenue Code, has given the IRS broad authority and discretion to specify the form and content of returns, so long as the IRS promulgates regulations requiring persons made liable for a tax to file those returns. This regulation will authorize the IRS to require certain corporations, as set out in forms, publications, instructions, or other guidance, to provide information concerning uncertain tax positions concurrent with the filing of a return. This information will aid the IRS in identifying those returns that pose the most significant risks of noncompliance and in selecting issues for examination. The IRS intends to implement the authority provided in this regulation initially by issuing a schedule and explanatory publication that require those corporations that prepare audited financial statements to file a schedule identifying and describing the uncertain tax positions, as described in FIN 48 and other generally accepted accounting standards, that relate to the tax liability reported on the return.

#### **Proposed Effective/Applicability Date**

When adopted as a final regulation, this rule will apply to returns filed for tax years beginning after December 15, 2009, and ending after the date of publication of these rules as final regulations in the **Federal Register**.

#### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

This regulation will only affect taxpayers that prepare or are required to issue au-

dated financial statements. Small entities rarely prepare or are required to issue audited financial statements due to the expense involved. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### **Comments and Requests for a 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 the Treasury Department request comments on the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments submitted by the public will be made available for public inspection and copying. A public hearing has been scheduled for October 15, 2010, beginning at 10 a.m. in the IRS 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. In addition, all visitors must present photo identifications 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 electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 12, 2010. A period

of 10 minutes will be allotted 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 Kathryn Zuba of the Office of the Associate Chief Counsel (Procedure and Administration).

\* \* \* \* \*

#### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

##### **PART 1—INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.6012–2 is also issued under the authority of 26 U.S.C. 6011 and 6012.

Par. 2. Section 1.6012–2 is amended by adding paragraphs (a)(4) and (a)(5) to read as follows:

*§1.6012–2 Corporations required to make returns of income.*

(a) \* \* \*

(4) *Disclosure of uncertain tax positions.* A corporation required to make a return under this section shall attach Schedule UTP, Uncertain Tax Position Statement, or any successor form, to such return, in accordance with forms, instructions, or other appropriate guidance provided by the IRS.

(5) *Effective/applicability date.* Paragraph (a)(4) of this section applies to returns filed for tax years beginning after December 15, 2009, and ending after the date of publication of the adoption of these rules as final regulations in the **Federal Register**.

\* \* \* \* \*

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

## **Treatment of Services Under Section 482; Allocation of Income and Deductions from Intangibles; Withdrawal**

### **Announcement 2010-60**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws proposed regulations published in the **Federal Register** on September 10, 2003 (REG-146893-02, 2003-2 C.B. 967 [68 FR 53448]), related to the treatment of controlled services transactions under section 482 and the allocation of income from intangibles, in particular with respect to contributions by a controlled party to the value of an intangible that is owned by another controlled party. The IRS and Treasury Department are withdrawing those proposed regulations because they have been superseded.

FOR FURTHER INFORMATION CONTACT: Gregory A. Spring (202) 435-5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### **Background**

On September 10, 2003, the Treasury Department and the IRS published in the **Federal Register** (68 FR 53448, REG-146893-02 and REG-115037-00, 2003-2 C.B. 967) proposed regulations relating to the treatment of controlled services transactions and the allocation of income from intangible property, in particular with respect to contributions by a controlled party to the value of intangible property owned by another controlled party. On August 4, 2006, the Treasury Department and the IRS published in the **Federal Register** (71 FR 44466, T.D. 9278, 2006-2 C.B. 256; REG-146893-02, REG-115037-00, and REG-138603-03, 2006-2 C.B. 317) temporary regulations relating to the treatment of controlled services transactions,

the allocation of income from intangible property, and stewardship expenses under Treas. Reg. §1.861-8(e)(4). A notice of proposed rulemaking cross-referencing the temporary regulations was published in the **Federal Register** on the same day (REG-146893-02; REG-115037-00; REG-138603-03, 2006-2 C.B. 317 [71 FR 44247]). Written comments responding to the notice of proposed rulemaking were received, and a public hearing was held on October 27, 2006. That notice of proposed rulemaking superseded the proposed regulations published in the **Federal Register** on September 10, 2003.

On August 4, 2009, the Treasury Department and the IRS published in the **Federal Register** (74 FR 38830, T.D. 9456, 2009-2 C.B. 188) final regulations that are generally consistent with the proposed regulations that were published on August 4, 2006, in the **Federal Register** (REG-146893-02; REG-115037-00; REG-138603-03, 2006-2 C.B. 317 [71 FR 44247]), and removed the corresponding temporary regulations.

#### **Withdrawal of a Notice of Proposed Rulemaking**

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-146893-02 and REG-115037-00) published in the **Federal Register** on September 10, 2003 (68 FR 53448) is withdrawn.

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

(Filed by the Office of the Federal Register on September 7, 2010, 8:45 a.m., and published in the issue of the Federal Register for September 8, 2010, 75 F.R. 53448)

## **Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428**

### **Announcement 2010-61**

This announcement serves notice to donors that on February 9, 2009, the United States Tax Court entered a stipulated decision that, effective

January 1, 2002 through October 6, 2005, the organization listed below is described in I.R.C. § 501(c)(3) and is exempt from taxation under I.R.C. § 501(a). Further, effective October 7, 2005, the organization listed below is not recognized as an organization described in I.R.C. § 501(c)(3), and is not exempt from taxation under I.R.C. § 501(a).

After Bankruptcy Foundation, Inc.  
Fishers, IN

## **Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428**

### **Announcement 2010-62**

This announcement serves notice to donors that on April 21, 2009, the United States Tax Court dismissed the 7428 action and determined that, effective January 1, 2003, the organization listed below is not recognized as an organization described in I.R.C. § 501(c)(3), is not exempt from taxation under I.R.C. § 501(a), and is not eligible to receive deductible charitable contributions as an organization described in I.R.C. § 170(c)(2).

America's Faith Centered Education, Inc.  
Sandy, UT

## **Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428**

### **Announcement 2010-63**

This announcement serves notice to donors that on October 27, 2009, the United States Tax Court entered a stipulated decision that, effective January 1, 2001, the organization listed below is not qualified as an organization described in I.R.C. § 501(c)(3) and is not an organization described in I.R.C. § 170(c)(2). Further, for the period January 1, 2001 through October 14, 2008, the IRS will not disallow any claimed charitable contributions deductions to petitioner on the grounds that petitioner is not an organization described in I.R.C. § 170(c)(2).

Further, effective January 1, 2001, petitioner is exempt from taxation under I.R.C. § 501(a) as an organization described in I.R.C. § 501(c)(4).

Airport Working Group of Orange County  
Newport Beach, CA

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## **Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428**

### **Announcement 2010-64**

This announcement serves notice to donors that on January 6, 2009, the United States Tax Court entered a stipulated decision that, effective January 1, 2002, the organization listed below is not recognized as an organization described in I.R.C. § 501(c)(3) and is not exempt from taxation under I.R.C. § 501(a).

Bear Soldier Industries  
Bismarck, ND

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## **Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428**

### **Announcement 2010-65**

This announcement serves notice to donors that on March 20, 2009, the United States Tax Court entered a stipulated decision that, effective January 1, 2003, the organization listed below is qualified as an organization described in I.R.C. § 501(c)(3) and is exempt from taxation under I.R.C. § 501(a).

Financial Policy Forum  
Washington, DC

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## **Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428**

### **Announcement 2010-66**

This announcement serves notice to donors that on February 12, 2010, the

United States Tax Court entered a stipulated decision that, effective September 1, 2001, the organization listed below is not qualified as an organization described in I.R.C. § 501(c)(3), is not exempt from taxation under I.R.C. § 501(a), and is not an organization described in I.R.C. § 170(c)(2).

Golden Age Benefits Society  
Westlake Village, CA

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## **Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428**

### **Announcement 2010-67**

This announcement serves notice to donors that on March 24, 2010, the United States Tax Court entered a stipulated decision that, effective January 1, 2004, the organization listed below is not qualified as an organization described in I.R.C. § 501(c)(3), is not exempt from taxation under I.R.C. § 501(a), and is not an organization described in I.R.C. § 170(c)(2).

Jordan Ministries, Inc.  
Dover, FL

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## **Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428**

### **Announcement 2010-68**

This announcement serves notice to donors that on February 5, 2009, the United States Tax Court entered a stipulated decision that, effective December 20, 2000, the organization listed below is not qualified as an organization described in I.R.C. § 501(c)(3) and is not exempt from taxation under I.R.C. § 501(a).

Douglas and Valerie Wood Charitable Supporting Organization  
Bonita Springs, FL

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## **Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428**

### **Announcement 2010-69**

This announcement serves notice to donors that on April 9, 2010, the United States Tax Court entered a stipulated decision that the organization listed below is qualified as an organization described in I.R.C. § 501(c)(3) and is exempt from taxation under I.R.C. § 501(a).

Love Quest Children's Foundation  
Cincinnati, OH

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## **Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428**

### **Announcement 2010-70**

This announcement serves notice to donors that on November 6, 2009, the United States Tax Court entered a stipulated decision that, effective August 1, 1998, the organization listed below is not qualified for exemption as an organization described in I.R.C. § 501(c)(3) and 509(a)(3) and is not exempt from taxation under I.R.C. § 501(a).

Newton Family Foundation  
West Jordan, UT

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## **Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428**

### **Announcement 2010-71**

This announcement serves notice to donors that on April 22, 2010, the United States Tax Court entered a stipulated decision that, effective January 1, 2003, the organization listed below is not recognized as an organization described in I.R.C. § 501(c)(3) and is not exempt from taxation under I.R.C. § 501(a).

United American Housing & Education  
Foundation  
Houston, TX

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**Notice of Disposition of  
Declaratory Judgment  
Proceedings Under Section  
7428**

**Announcement 2010–72**

This announcement serves notice to donors that on January 20, 2010, the United States Tax Court entered a stipulated decision that, effective January 1, 2002, the organization listed below is not qualified as an organization described in I.R.C. § 501(c)(3) and is not exempt from taxation under I.R.C. § 501(a).

Wasatch Homes Charitable Foundation  
Draper, UT

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**Notice of Disposition of  
Declaratory Judgment  
Proceedings Under Section  
7428**

**Announcement 2010–73**

This announcement serves notice to donors that on November 21, 2008, the

United States Tax Court entered a stipulated decision that, effective January 1, 2007, the organization listed below is not recognized as an organization described in I.R.C. § 501(c)(3), is not exempt from taxation under I.R.C. § 501(a), and is not eligible to receive deductible charitable contributions as an organization described in I.R.C. § 170(c)(2).

Texas Reinvestment Corporation II  
San Antonio, TX

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**Section 7428(c) Validation  
of Certain Contributions  
Made During Pendency  
of Declaratory Judgment  
Proceedings**

**Announcement 2010–74**

This announcement serves notice to potential donors that the organization listed below has recently filed a timely declaratory judgment suit under section 7428 of the Code, challenging revocation of its status as an eligible donee under section 170(c)(2).

Protection under section 7428(c) of the Code begins on the date that the notice of revocation is published in the Internal Revenue Bulletin and ends on the date on which a court first determines that an

organization is not described in section 170(c)(2), as more particularly set forth in section 7428(c)(1).

In the case of individual contributors, the maximum amount of contributions protected during this period is limited to \$1,000.00, with a husband and wife being treated as one contributor. This protection is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organizations that were the basis for the revocation.

This protection also applies (but without limitation as to amount) to organizations described in section 170(c)(2) which are exempt from tax under section 501(a). If the organization ultimately prevails in its declaratory judgment suit, deductibility of contributions would be subject to the normal limitations set forth under section 170.

Chadwell-Townsend Private Foundation  
Bellbrook, OH

DPA Alliance Corporation  
Provo, UT

Harbour Credit Counseling Services, Inc  
Virginia Beach, VA

Nat Turner Legal Defense Fund  
Garland, TX

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

## Abbreviations

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

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

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

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

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<sup>1</sup> A cumulative list of 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.





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