

## **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. 2010-31, page 898.**

**Interest rates; underpayments and overpayments.** The rates for interest determined under section 6621 of the Code for the calendar quarter beginning January 1, 2011, will be 3 percent for overpayments (2 percent in the case of a corporation), 3 percent for underpayments, and 5 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 0.5 percent.

#### **Notice 2010-87, page 908.**

This notice provides transitional relief for determining the timeliness of federal tax deposits (FTDs) under section 6302 of the Code.

#### **Notice 2010-92, page 916.**

This notice primarily addresses the application of section 909 of the Code to foreign income taxes paid or accrued in taxable years of a section 902 corporation beginning on or before December 31, 2010. It includes an exclusive list of arrangements that will be treated as foreign tax credit splitting events for those taxable years.

#### **Announcement 2010-96, page 936.**

The Internal Revenue Service announces the release of Form 8944, *Preparer e-file Hardship Waiver Request*, which tax return preparers who meet the definition of a specified tax return preparer and who believe they may qualify for an undue hardship waiver may begin to use to voluntarily submit an undue hardship waiver request to the IRS now. Preparers must use Form 8944 to voluntarily request a waiver. This announcement also informs tax return preparers of the time limits for submitting waiver requests for 2011, and that approval of any waiver

request is contingent upon and will not occur prior to the publication of final regulations and a final revenue procedure, which is expected in early 2011.

### **EMPLOYEE PLANS**

#### **Notice 2010-90, page 909.**

This notice contains the 2010 Cumulative List of Changes in Plan Qualification Requirements (2010 Cumulative List) described in section 4 of Rev. Proc. 2007-44, 2007-2 C.B. 54. The 2010 Cumulative List is to be used by plan sponsors and practitioners submitting determination, opinion, or advisory letter applications for plans during the period beginning February 1, 2011, and ending January 31, 2012.

#### **Notice 2010-93, page 923.**

**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 December 2010; the 24-month average segment rates; the funding transitional segment rates applicable for December 2010; and the minimum present value transitional rates for November 2010.

#### **Rev. Proc. 2010-52, page 927.**

This document describes the procedure by which the plan sponsor of a multiemployer pension plan may request and obtain approval of an extension of an amortization period in accordance with section 431(d) of the Code. Rev. Proc. 2008-67 superseded. Rev. Proc. 2010-4 modified.

**(Continued on the next page)**

**Actions Relating to Court Decisions is on the page following the Introduction.**  
**Finding Lists begin on page ii.**  
**Index for July through December begins on page v.**



## EXEMPT ORGANIZATIONS

### **Notice 2010–87, page 908.**

This notice provides transitional relief for determining the timeliness of federal tax deposits (FTDs) under section 6302 of the Code.

### **Announcement 2010–94, page 936.**

The IRS has revoked its determination that the Armenian Relief Society of Richmond, TX; the Mexican American Research Center, Inc., of Austin, TX; and Panhandle Land Conservancy, Inc., of Destin, FL, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

## EMPLOYMENT TAX

### **Notice 2010–87, page 908.**

This notice provides transitional relief for determining the timeliness of federal tax deposits (FTDs) under section 6302 of the Code.

## SELF-EMPLOYMENT TAX

### **Notice 2010–87, page 908.**

This notice provides transitional relief for determining the timeliness of federal tax deposits (FTDs) under section 6302 of the Code.

## EXCISE TAX

### **Notice 2010–87, page 908.**

This notice provides transitional relief for determining the timeliness of federal tax deposits (FTDs) under section 6302 of the Code.

### **Notice 2010–89, page 908.**

This notice requests public comments on issues to be addressed in guidance implementing the new excise tax on medical devices imposed by section 4191 of the Code. Section 4191 was added by section 1405 of the Health Care and Education Reconciliation Act of 2010 (the Act), in conjunction with the Patient Protection and Affordable Care Act. The new excise tax applies to sales of taxable medical devices after December 31, 2012.

## ADMINISTRATIVE

### **Notice 2010–91, page 915.**

This notice provides guidance on the application of section 3402(t) of the Code to payments made by credit, debit, stored value, and other payment cards.

### **Notice 2010–94, page 927.**

This notice delays the effective date for compliance with Revenue Ruling 2006–57, 2006–2 C.B. 911, which provides guidance on the use of smartcards, debit or credit cards, or other electronic media to provide qualified transportation fringes under section 132(f) of the Code, until January 1, 2012.

### **Announcement 2010–95, page 936.**

This document contains a correction to final regulations (T.D. 9340, 2007–2 C.B. 487) providing updated guidance on section 403(b) contracts of public schools and tax-exempt organizations described in section 501(c)(3). These regulations will affect sponsors of section 403(b) contracts, administrators, participants, and beneficiaries.

### **Announcement 2010–96, page 936.**

The Internal Revenue Service announces the release of Form 8944, *Preparer e-file Hardship Waiver Request*, which tax return preparers who meet the definition of a specified tax return preparer and who believe they may qualify for an undue hardship waiver may begin to use to voluntarily submit an undue hardship waiver request to the IRS now. Preparers must use Form 8944 to voluntarily request a waiver. This announcement also informs tax return preparers of the time limits for submitting waiver requests for 2011, and that approval of any waiver request is contingent upon and will not occur prior to the publication of final regulations and a final revenue procedure, which is expected in early 2011.

# The IRS Mission

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

force the law with integrity and fairness to all.

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

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

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

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

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

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

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

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

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

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

# Actions Relating to Decisions of the Tax Court

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

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

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

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

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

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

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

The Commissioner acquiescence in result only in the following decision:

**Jerome R. Vainisi and Deloris L. Vainisi v. Commissioner**<sup>1</sup>  
599 F. 3d 567 (7th Cir. 2010),  
*rev'g* 132 T.C. No. 1 (2009)

<sup>1</sup> Acquiesces in result whether the State Department certification required under IRC § 893(b) is a prerequisite for the tax exemption provided for in I.R.C. § 893(a).

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

## Section 6621.—Determination of Rate of Interest

26 CFR 301.6621-1: Interest rate.

**Interest rates; underpayments and overpayments.** The rates for interest determined under section 6621 of the Code for the calendar quarter beginning January 1, 2011, will be 3 percent for overpayments (2 percent in the case of a corporation), 3 percent for underpayments, and 5 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 0.5 percent.

### Rev. Rul. 2010-31

Section 6621 of the Internal Revenue Code establishes the rates for interest on tax overpayments and tax underpayments. Under section 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section 6601 on any large corporate underpayment, the underpayment rate under section 6621(a)(2) is determined by substituting “5 percentage points” for “3 percentage points.” See section 6621(c) and section 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the appli-

cable date. Section 6621(c) and section 301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter. Section 6621(b)(2)(A) provides that the federal short-term rate determined under section 6621(b)(1) for any month applies during the first calendar quarter beginning after that month. Section 6621(b)(2)(B) provides that in determining the addition to tax under section 6654 for failure to pay estimated tax for any taxable year, the federal short-term rate that applies during the third month following the taxable year also applies during the first 15 days of the fourth month following the taxable year. Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during that month by the Secretary in accordance with section 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that, in determining the quarterly interest rates to be used for overpayments and underpayments of tax under section 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with section 6621 which, pursuant to section 6622, is subject to daily compounding.

The federal short-term rate determined in accordance with section 1274(d) during October 2010 is the rate published in Revenue Ruling 2010-26, 2010-44 I.R.B. 573, to take effect beginning November 1, 2010. The federal short-term rate, rounded to the nearest full percent, based on daily compounding determined during

the month of October 2010 is 0 percent. Accordingly, an overpayment rate of 3 percent (2 percent in the case of a corporation) and an underpayment rate of 3 percent are established for the calendar quarter beginning January 1, 2011. The overpayment rate for the portion of a corporate overpayment exceeding \$10,000 for the calendar quarter beginning January 1, 2011, is 0.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning January 1, 2011, is 5 percent. These rates apply to amounts bearing interest during that calendar quarter.

Under section 6621(b)(2)(B), the 3 percent rate also applies to estimated tax underpayments for the first calendar quarter in 2011 and for the first 15 days in April 2011.

Interest factors for daily compound interest for an annual rate of 0.5 percent are published in Appendix A of this Revenue Ruling. Interest factors for daily compound interest for annual rates of 2 percent, 3 percent, and 5 percent are published in Tables 7, 9, 11, and 15 of Rev. Proc. 95-17, 1995-1 C.B. 561, 563, 565, and 569.

Annual interest rates to be compounded daily pursuant to section 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

### DRAFTING INFORMATION

The principal author of this revenue ruling is Deborah Colbert-James of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Ms. Colbert-James at (202) 622-8143 (not a toll-free call).

365 Day Year					
0.5% Compound Rate 184 Days					
Days	Factor	Days	Factor	Days	Factor
1	0.000013699	63	0.000863380	125	0.001713784
2	0.000027397	64	0.000877091	126	0.001727506
3	0.000041096	65	0.000890801	127	0.001741228
4	0.000054796	66	0.000904512	128	0.001754951
5	0.000068495	67	0.000918223	129	0.001768673
6	0.000082195	68	0.000931934	130	0.001782396
7	0.000095894	69	0.000945646	131	0.001796119
8	0.000109594	70	0.000959357	132	0.001809843
9	0.000123294	71	0.000973069	133	0.001823566
10	0.000136995	72	0.000986781	134	0.001837290
11	0.000150695	73	0.001000493	135	0.001851013
12	0.000164396	74	0.001014206	136	0.001864737
13	0.000178097	75	0.001027918	137	0.001878462
14	0.000191798	76	0.001041631	138	0.001892186
15	0.000205499	77	0.001055344	139	0.001905910
16	0.000219201	78	0.001069057	140	0.001919635
17	0.000232902	79	0.001082770	141	0.001933360
18	0.000246604	80	0.001096484	142	0.001947085
19	0.000260306	81	0.001110197	143	0.001960811
20	0.000274008	82	0.001123911	144	0.001974536
21	0.000287711	83	0.001137625	145	0.001988262
22	0.000301413	84	0.001151339	146	0.002001988
23	0.000315116	85	0.001165054	147	0.002015714
24	0.000328819	86	0.001178768	148	0.002029440
25	0.000342522	87	0.001192483	149	0.002043166
26	0.000356225	88	0.001206198	150	0.002056893
27	0.000369929	89	0.001219913	151	0.002070620
28	0.000383633	90	0.001233629	152	0.002084347
29	0.000397336	91	0.001247344	153	0.002098074
30	0.000411041	92	0.001261060	154	0.002111801
31	0.000424745	93	0.001274776	155	0.002125529
32	0.000438449	94	0.001288492	156	0.002139257
33	0.000452154	95	0.001302208	157	0.002152985
34	0.000465859	96	0.001315925	158	0.002166713
35	0.000479564	97	0.001329641	159	0.002180441
36	0.000493269	98	0.001343358	160	0.002194169
37	0.000506974	99	0.001357075	161	0.002207898
38	0.000520680	100	0.001370792	162	0.002221627
39	0.000534386	101	0.001384510	163	0.002235356
40	0.000548092	102	0.001398227	164	0.002249085
41	0.000561798	103	0.001411945	165	0.002262815
42	0.000575504	104	0.001425663	166	0.002276544
43	0.000589211	105	0.001439381	167	0.002290274
44	0.000602917	106	0.001453100	168	0.002304004
45	0.000616624	107	0.001466818	169	0.002317734
46	0.000630331	108	0.001480537	170	0.002331465
47	0.000644039	109	0.001494256	171	0.002345195
48	0.000657746	110	0.001507975	172	0.002358926
49	0.000671454	111	0.001521694	173	0.002372657
50	0.000685161	112	0.001535414	174	0.002386388
51	0.000698869	113	0.001549133	175	0.002400120
52	0.000712578	114	0.001562853	176	0.002413851
53	0.000726286	115	0.001576573	177	0.002427583
54	0.000739995	116	0.001590293	178	0.002441315
55	0.000753703	117	0.001604014	179	0.002455047
56	0.000767412	118	0.001617734	180	0.002468779

365 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
57	0.000781121	119	0.001631455	181	0.002482511
58	0.000794831	120	0.001645176	182	0.002496244
59	0.000808540	121	0.001658897	183	0.002509977
60	0.000822250	122	0.001672619	184	0.002523710
61	0.000835960	123	0.001686340		
62	0.000849670	124	0.001700062		

366 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
1	0.000013661	63	0.000861020	125	0.001709097
2	0.000027323	64	0.000874693	126	0.001722782
3	0.000040984	65	0.000888366	127	0.001736467
4	0.000054646	66	0.000902040	128	0.001750152
5	0.000068308	67	0.000915713	129	0.001763837
6	0.000081970	68	0.000929387	130	0.001777522
7	0.000095632	69	0.000943061	131	0.001791208
8	0.000109295	70	0.000956735	132	0.001804893
9	0.000122958	71	0.000970409	133	0.001818579
10	0.000136620	72	0.000984084	134	0.001832265
11	0.000150283	73	0.000997758	135	0.001845951
12	0.000163947	74	0.001011433	136	0.001859638
13	0.000177610	75	0.001025108	137	0.001873324
14	0.000191274	76	0.001038783	138	0.001887011
15	0.000204938	77	0.001052459	139	0.001900698
16	0.000218602	78	0.001066134	140	0.001914385
17	0.000232266	79	0.001079810	141	0.001928073
18	0.000245930	80	0.001093486	142	0.001941760
19	0.000259595	81	0.001107162	143	0.001955448
20	0.000273260	82	0.001120839	144	0.001969136
21	0.000286924	83	0.001134515	145	0.001982824
22	0.000300590	84	0.001148192	146	0.001996512
23	0.000314255	85	0.001161869	147	0.002010201
24	0.000327920	86	0.001175546	148	0.002023889
25	0.000341586	87	0.001189223	149	0.002037578
26	0.000355252	88	0.001202900	150	0.002051267
27	0.000368918	89	0.001216578	151	0.002064957
28	0.000382584	90	0.001230256	152	0.002078646
29	0.000396251	91	0.001243934	153	0.002092336
30	0.000409917	92	0.001257612	154	0.002106025
31	0.000423584	93	0.001271291	155	0.002119715
32	0.000437251	94	0.001284969	156	0.002133405
33	0.000450918	95	0.001298648	157	0.002147096
34	0.000464586	96	0.001312327	158	0.002160786
35	0.000478253	97	0.001326006	159	0.002174477
36	0.000491921	98	0.001339685	160	0.002188168
37	0.000505589	99	0.001353365	161	0.002201859
38	0.000519257	100	0.001367044	162	0.002215550
39	0.000532925	101	0.001380724	163	0.002229242
40	0.000546594	102	0.001394404	164	0.002242933
41	0.000560262	103	0.001408085	165	0.002256625
42	0.000573931	104	0.001421765	166	0.002270317
43	0.000587600	105	0.001435446	167	0.002284010
44	0.000601269	106	0.001449127	168	0.002297702
45	0.000614939	107	0.001462808	169	0.002311395

366 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
46	0.000628608	108	0.001476489	170	0.002325087
47	0.000642278	109	0.001490170	171	0.002338780
48	0.000655948	110	0.001503852	172	0.002352473
49	0.000669618	111	0.001517533	173	0.002366167
50	0.000683289	112	0.001531215	174	0.002379860
51	0.000696959	113	0.001544897	175	0.002393554
52	0.000710630	114	0.001558580	176	0.002407248
53	0.000724301	115	0.001572262	177	0.002420942
54	0.000737972	116	0.001585945	178	0.002434636
55	0.000751643	117	0.001599628	179	0.002448331
56	0.000765315	118	0.001613311	180	0.002462025
57	0.000778986	119	0.001626994	181	0.002475720
58	0.000792658	120	0.001640678	182	0.002489415
59	0.000806330	121	0.001654361	183	0.002503110
60	0.000820003	122	0.001668045	184	0.002516806
61	0.000833675	123	0.001681729		
62	0.000847348	124	0.001695413		

TABLE OF INTEREST RATES

PERIODS BEFORE JUL. 1, 1975 — PERIODS ENDING DEC. 31, 1986

OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995-1 C.B.
		DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES

FROM JAN. 1, 1987 — DEC. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627



TABLE OF INTEREST RATES  
FROM JAN. 1, 1987 — DEC. 31, 1998 – Continued

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES  
FROM JANUARY 1, 1999 — PRESENT  
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	1995-1 C.B.		
	RATE	TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623

TABLE OF INTEREST RATES  
 FROM JANUARY 1, 1999 — PRESENT — Continued  
 NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995-1 C.B. TABLE	PG
Apr. 1, 2000—Jun. 30, 2000	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	7%	19	573
Apr. 1, 2006—Jun. 30, 2006	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	8%	21	575
Oct. 1, 2007—Dec. 31, 2007	8%	21	575
Jan. 1, 2008—Mar. 31, 2008	7%	67	621
Apr. 1, 2008—Jun. 30, 2008	6%	65	619
Jul. 1, 2008—Sep. 30, 2008	5%	63	569
Oct. 1, 2008—Dec. 31, 2008	6%	65	567
Jan. 1, 2009—Mar. 31, 2009	5%	15	567
Apr. 1, 2009—Jun. 30, 2009	4%	13	567
Jul. 1, 2009—Sep. 30, 2009	4%	13	567
Oct. 1, 2009—Dec. 31, 2009	4%	13	567
Jan. 1, 2010—Mar. 31, 2010	4%	13	567
Apr. 1, 2010—Jun. 30, 2010	4%	13	567
Jul. 1, 2010—Sep. 30, 2010	4%	13	567
Oct. 1, 2010—Dec. 31, 2010	4%	13	567
Jan. 1, 2011—Mar. 31, 2011	3%	11	565

TABLE OF INTEREST RATES  
FROM JANUARY 1, 1999 — PRESENT  
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	4%	13	567	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	4%	13	567	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	4%	13	567	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	3%	11	565	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	3%	59	613	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	4%	61	615	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	3%	59	613	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	4%	61	615	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	4%	13	567	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	5%	15	569	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	5%	15	569	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	6%	17	571	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	6%	17	571	7%	19	573
Apr. 1, 2006—Jun. 30, 2006	6%	17	571	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	7%	19	573	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	7%	19	573	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	7%	19	573	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	7%	19	573	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	7%	19	573	8%	21	575
Oct. 1, 2007—Dec. 31, 2007	7%	19	573	8%	21	575
Jan. 1, 2008—Mar. 31, 2008	6%	65	619	7%	67	621
Apr. 1, 2008—Jun. 30, 2008	5%	63	617	6%	65	619
Jul. 1, 2008—Sep. 30, 2008	4%	61	615	5%	63	617
Oct. 1, 2008—Dec. 31, 2008	5%	63	617	6%	65	619
Jan. 1, 2009—Mar. 31, 2009	4%	13	567	5%	15	569
Apr. 1, 2009—Jun. 30, 2009	3%	11	565	4%	13	567
Jul. 1, 2009—Sep. 30, 2009	3%	11	565	4%	13	567
Oct. 1, 2009—Dec. 31, 2009	3%	11	565	4%	13	567
Jan. 1, 2010—Mar. 31, 2010	3%	11	565	4%	13	567
Apr. 1, 2010—Jun. 30, 2010	3%	11	565	4%	13	567
Jul. 1, 2010—Sep. 30, 2010	3%	11	565	4%	13	567
Oct. 1, 2010—Dec. 31, 2010	3%	11	565	4%	13	567
Jan. 1, 2011—Mar. 31, 2011	2%	9	563	3%	11	565

TABLE OF INTEREST RATES FOR  
LARGE CORPORATE UNDERPAYMENTS  
FROM JANUARY 1, 1991 — PRESENT

	RATE	1995-1 C.B. TABLE	PG
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579
Jul. 1, 2001—Sep. 30, 2001	9%	23	577
Oct. 1, 2001—Dec. 31, 2001	9%	23	577
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 30, 2002	8%	21	575
Jul. 1, 2002—Sep. 30, 2002	8%	21	575
Oct. 1, 2002—Dec. 30, 2002	8%	21	575
Jan. 1, 2003—Mar. 31, 2003	7%	19	573
Apr. 1, 2003—Jun. 30, 2003	7%	19	573
Jul. 1, 2003—Sep. 30, 2003	7%	19	573
Oct. 1, 2003—Dec. 31, 2003	6%	17	571
Jan. 1, 2004—Mar. 31, 2004	6%	65	619
Apr. 1, 2004—Jun. 30, 2004	7%	67	621
Jul. 1, 2004—Sep. 30, 2004	6%	65	619
Oct. 1, 2004—Dec. 31, 2004	7%	67	621

TABLE OF INTEREST RATES FOR  
LARGE CORPORATE UNDERPAYMENTS  
FROM JANUARY 1, 1991 — PRESENT – Continued

	RATE	1995-1 C.B. TABLE	PG
Jan. 1, 2005—Mar. 31, 2005	7%	19	573
Apr. 1, 2005—Jun. 30, 2005	8%	21	575
Jul. 1, 2005—Sep. 30, 2005	8%	21	575
Oct. 1, 2005—Dec. 31, 2005	9%	23	577
Jan. 1, 2006—Mar. 31, 2006	9%	23	577
Apr. 1, 2006—Jun. 30, 2006	9%	23	577
Jul. 1, 2006—Sep. 30, 2006	10%	25	579
Oct. 1, 2006—Dec. 31, 2006	10%	25	579
Jan. 1, 2007—Mar. 31, 2007	10%	25	579
Apr. 1, 2007—Jun. 30, 2007	10%	25	579
Jul. 1, 2007—Sep. 30, 2007	10%	25	579
Oct. 1, 2007—Dec. 31, 2007	10%	25	579
Jan. 1, 2008—Mar. 31, 2008	9%	71	625
Apr. 1, 2008—Jun. 30, 2008	8%	69	623
Jul. 1, 2008—Sep. 30, 2008	7%	67	621
Oct. 1, 2008—Dec. 31, 2008	8%	69	623
Jan. 1, 2009—Mar. 31, 2009	7%	19	573
Apr. 1, 2009—Jun. 30, 2009	6%	17	571
Jul. 1, 2009—Sep. 30, 2009	6%	17	571
Oct. 1, 2009—Dec. 31, 2009	6%	17	571
Jan. 1, 2010—Mar. 31, 2010	6%	17	571
Apr. 1, 2010—Jun. 30, 2010	6%	17	571
Jul. 1, 2010—Sep. 30, 2010	6%	17	571
Oct. 1, 2010—Dec. 31, 2010	6%	17	571
Jan. 1, 2011—Mar. 31, 2011	5%	15	569

TABLE OF INTEREST RATES FOR CORPORATE  
OVERPAYMENTS EXCEEDING \$10,000  
FROM JANUARY 1, 1995 — PRESENT

	RATE	1995-1 C.B. TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1, 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000—Mar. 31, 2000	5.5%	64	618

TABLE OF INTEREST RATES FOR CORPORATE  
OVERPAYMENTS EXCEEDING \$10,000  
FROM JANUARY 1, 1995 — PRESENT — Continued

	RATE	1995-1 C.B. TABLE	PG
Apr. 1, 2000—Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000—Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000—Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001—Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001—Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001—Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001—Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002—Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002—Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002—Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002—Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003—Mar. 31, 2003	2.5%	10	564
Apr. 1, 2003—Jun. 30, 2003	2.5%	10	564
Jul. 1, 2003—Sep. 30, 2003	2.5%	10	564
Oct. 1, 2003—Dec. 31, 2003	1.5%	8	562
Jan. 1, 2004—Mar. 31, 2004	1.5%	56	610
Apr. 1, 2004—Jun. 30, 2004	2.5%	58	612
Jul. 1, 2004—Sep. 30, 2004	1.5%	56	610
Oct. 1, 2004—Dec. 31, 2004	2.5%	58	612
Jan. 1, 2005—Mar. 31, 2005	2.5%	10	564
Apr. 1, 2005—Jun. 30, 2005	3.5%	12	566
Jul. 1, 2005—Sep. 30, 2005	3.5%	12	566
Oct. 1, 2005—Dec. 31, 2005	4.5%	14	568
Jan. 1, 2006—Mar. 31, 2006	4.5%	14	568
Apr. 1, 2006—Jun. 30, 2006	4.5%	14	568
Jul. 1, 2006—Sep. 30, 2006	5.5%	16	570
Oct. 1, 2006—Dec. 31, 2006	5.5%	16	570
Jan. 1, 2007—Mar. 31, 2007	5.5%	16	570
Apr. 1, 2007—Jun. 30, 2007	5.5%	16	570
Jul. 1, 2007—Sep. 30, 2007	5.5%	16	570
Oct. 1, 2007—Dec. 31, 2007	5.5%	16	570
Jan. 1, 2008—Mar. 31, 2008	4.5%	62	616
Apr. 1, 2008—Jun. 30, 2008	3.5%	60	614
Jul. 1, 2008—Sep. 30, 2008	2.5%	58	612
Oct. 1, 2008—Dec. 31, 2008	3.5%	60	614
Jan. 1, 2009—Mar. 31, 2009	2.5%	10	564
Apr. 1, 2009—Jun. 30, 2009	1.5%	8	562
Jul. 1, 2009—Sep. 30, 2009	1.5%	8	562
Oct. 1, 2009—Dec. 31, 2009	1.5%	8	562
Jan. 1, 2010—Mar. 31, 2010	1.5%	8	562
Apr. 1, 2010—Jun. 30, 2010	1.5%	8	562
Jul. 1, 2010—Sep. 30, 2010	1.5%	8	562
Oct. 1, 2010—Dec. 31, 2010	1.5%	8	562
Jan. 1, 2011—Mar. 31, 2011	0.5%*		

# Part III. Administrative, Procedural, and Miscellaneous

## Transitional Relief for Determining Timeliness of Federal Tax Deposits

### Notice 2010-87

#### PURPOSE

This notice provides transitional relief for determining the timeliness of Federal tax deposits (FTDs) under section 6302 of the Internal Revenue Code (“Code”). The notice provides that the Internal Revenue Service (“Service”) will not assert penalties under Code section 6656 for FTDs due in calendar year 2011 that are untimely solely because the depositor treated a statewide legal holiday as if it were a legal holiday in the District of Columbia.

#### BACKGROUND

Effective January 1, 2011, the Financial Management Service, a Bureau of the Treasury Department, is eliminating the system that allows FTDs to be made using paper coupons at government depository banks. On August 23, 2010, the Treasury Department and the Service published a notice of proposed rulemaking (REG-153340-09, 2010-42 I.R.B. 469 (74 FR 51707)), to require electronic funds transfer for all FTDs and to eliminate the rules regarding FTD coupons. Since a taxpayer will no longer be able to make FTDs at a government depository bank, the proposed regulations removed references to “banking days” and instead determined the timeliness of deposits by reference to “business days,” meaning every calendar day that is not a Saturday, Sunday, or legal holiday under section 7503. These changes were adopted in the final regulations published on December 7, 2010. T.D. 9507.

Consistent with section 7503, the term “legal holiday” for FTD purposes includes only those legal holidays in the District of Columbia. Thus, a statewide legal holiday will no longer be considered a legal holiday unless the holiday coincides with a legal holiday in the District of Columbia. See Treas. Reg. §§ 31.6302-1(c)(2)(iii) and (d) Example 5.

## TRANSITIONAL RELIEF FOR FEDERAL TAX DEPOSITS DUE IN 2011

Code section 6656 imposes a penalty if a taxpayer does not deposit tax in the correct amount, within the prescribed time period, and/or in the required manner. In order to provide transitional relief, the Service will not assert penalties under section 6656 for FTDs due during calendar year 2011 that are untimely solely because the depositor treated a statewide legal holiday as if it were a legal holiday in the District of Columbia.

#### DRAFTING INFORMATION

The principal author of this notice is Michael Hara of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, please contact Michael Hara at (202) 622-4910 (not a toll-free call).

## Request for Comments Regarding the Excise Tax on Medical Devices

### Notice 2010-89

#### PURPOSE

This notice invites public comments regarding issues that should be addressed in guidance implementing the new excise tax on medical devices imposed by section 4191 of the Internal Revenue Code (Code). Section 4191 was added by section 1405 of the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, 1064-1065 (the Act), in conjunction with the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119. The new excise tax applies to sales of taxable medical devices after December 31, 2012.

#### BACKGROUND

Under Chapter 32 (Manufacturers Excise Taxes) of Subtitle D of the Code, excise taxes are imposed on the sales of certain products by the manufacturer, producer, or importer. The Act amended Chapter 32 to add section 4191, which

imposes an excise tax on the sale of any “taxable medical device” by the manufacturer, producer, or importer of the device in an amount equal to 2.3 percent of the sale price.

Section 4191(b)(1) provides that, in general, a “taxable medical device” is any device, as defined in section 201(h) of the Federal Food, Drug, & Cosmetic Act (FFDCA), that is intended for humans. Section 201(h) of the FFDCA defines “device” as an instrument, apparatus, implement, machine, contrivance, implant, *in vitro* reagent, or other similar or related article, including any component, part, or accessory, which is (1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them, (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, or (3) intended to affect the structure or any function of the body, and which does not achieve its primary intended purposes through chemical action within or on the body and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

Section 4191(b)(2) provides that the term “taxable medical device” does not include eyeglasses, contact lenses, hearing aids, or “any other medical device determined by the Secretary to be of a type which is generally purchased by the general public at retail for individual use.”

Section 4221 exempts certain sales from tax imposed under Chapter 32. The Act amended section 4221 to limit the exemptions for taxable medical device sales to sales by the manufacturer, producer, or importer (1) for use by the purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture; or (2) for export, or for resale by the purchaser to a second purchaser for export.

#### REQUEST FOR COMMENTS

The Internal Revenue Service and Treasury Department request comments on issues that should be addressed in guidance implementing the excise tax on medical devices. Comments are specifically

requested on the exemption in section 4191(b)(2)(D) for any medical device “determined by the Secretary to be of a type which is generally purchased by the general public at retail for individual use.” In addition, comments are requested on issues pertaining to the application of existing Chapter 32 rules to section 4191. Comments must be submitted by March 28, 2011. Comments, identified by Notice 2010–89 may be sent by one of the following methods:

- Mail:

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2010–89)  
Room 5203  
P. O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

- Hand or courier delivery:

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 2010–89)

- Electronic:

Alternatively, taxpayers may submit comments electronically to [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov). Please include “Notice 2010–89” in the subject line of any electronic communications.

All submissions will be available for public inspection and copying in room 1621, 1111 Constitution Avenue, NW, Washington, DC, from 9 a.m. to 4 p.m.

#### DRAFTING INFORMATION

The principal author of this notice is Natalie A. Payne of the Office of Associate Chief Counsel (Passthroughs & Special Industries Division). For further information regarding this notice, please con-

tact Ms. Payne or Stephanie Bland at (202) 622–3130 (not a toll-free call).

## 2010 Cumulative List of Changes in Plan Qualification Requirements

### Notice 2010–90

#### I. PURPOSE

This notice contains the 2010 Cumulative List of Changes in Plan Qualification Requirements (2010 Cumulative List) described in section 4 of Rev. Proc. 2007–44, 2007–2 C.B. 54. The 2010 Cumulative List is to be used by plan sponsors and practitioners submitting determination, opinion, or advisory letter applications for plans during the period beginning February 1, 2011 and ending January 31, 2012. These plans will primarily be (1) single employer individually designed defined contribution plans, including employee stock ownership plans (ESOPs), and single employer individually designed defined benefit plans that are in Cycle A and (2) defined contribution pre-approved plans (that is, defined contribution plans that are master and prototype (M&P) or volume submitter (VS) plans) for the second submission under the remedial amendment cycle under Rev. Proc. 2007–44. Generally, an individually designed plan is in Cycle A if the last digit of the employer identification number of the plan sponsor is 1 or 6.

The list of changes in section IV of this notice does not extend the deadline by which a plan must be amended to comply with any statutory, regulatory, or guidance changes. The general deadline for timely adoption of an interim or discretionary amendment can be found in section 5.05 of Rev. Proc. 2007–44.

#### II. BACKGROUND

Rev. Proc. 2007–44 sets forth procedures for issuing opinion, advisory, and determination letters and describes the five-year remedial amendment cycle for individually designed plans and the six-year remedial amendment cycle for pre-approved plans. In addition, section

5.05 of Rev. Proc. 2007–44 provides the deadline for timely adoption of an interim amendment or discretionary amendment.

Under section 4 of Rev. Proc. 2007–44, the Internal Revenue Service announces its intention to annually publish a Cumulative List to identify statutory, regulatory, and guidance changes that must be taken into account in submissions by plan sponsors to the Service for opinion, advisory, and determination letters whose submission period begins on February 1st following issuance of the Cumulative List.

In Notice 2009–98, 2009–2 C.B. 974, the Service published the 2009 Cumulative List of Changes in Plan Qualification Requirements (2009 Cumulative List).<sup>1</sup>

#### III. APPLICATION OF 2010 CUMULATIVE LIST

This notice is being issued in conjunction with the determination letter program for individually designed plans eligible for Cycle A and the opinion and advisory letter programs for M&P and VS defined contribution pre-approved plans. In accordance with Rev. Proc. 2007–44, the Service will start accepting determination letter applications for Cycle A individually designed plans beginning on February 1, 2011. The 12-month submission period for Cycle A plans will end January 31, 2012. In addition, the Service will start accepting opinion and advisory letter applications for defined contribution pre-approved plans beginning on February 1, 2011. The 12-month submission period for non-mass submitter sponsors and practitioners, word-for-word identical adopters, and M&P minor modifier placeholder applications will end January 31, 2012. The 9-month submission period for mass submitters and national sponsors will end October 31, 2011, as provided in section 18.02(1) of Rev. Proc. 2007–44.

The 2010 Cumulative List, set forth in section IV of this notice, informs plan sponsors of issues the Service has specifically identified for review in determining whether a plan filing in Cycle A has been properly updated. Specifically, the 2010 Cumulative List reflects law changes under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA),

<sup>1</sup> See Notice 2008–108, 2008–2 C.B. 1275; Notice 2007–94, 2007–2 C.B. 1179; Notice 2007–3, 2007–1 C.B. 255; Notice 2005–101, 2005–2 C.B. 1219, for the 2008, 2007, 2006, and 2005 Cumulative Lists, respectively.



Pub. L. 107–16 (with technical corrections made by the Job Creation and Worker Assistance Act of 2002 (JCWAA), Pub. L. 107–147), the Pension Funding Equity Act of 2004 (PFEA), Pub. L. 108–218, the Pension Protection Act of 2006 (PPA '06), Pub. L. 109–280, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. 110–28, the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), Pub. L. 110–245, the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), Pub. L. 110–458, and the Small Business Jobs Act of 2010 (SBJA), Pub. L. 111–240.

The HEART Act provisions formerly appeared separately from the Cumulative List of Changes in Plan Qualification Requirements section of the 2008 and 2009 Cumulative Lists. The HEART Act provisions are now included in the Cumulative List of Changes in Plan Qualification Requirements (which is section IV of this notice) and are identified as “New.”

Section 201 of WRERA formerly appeared separately from the Cumulative List of Changes in Plan Qualification Requirements section of the 2009 Cumulative List. Section 201 is now included in the Cumulative List of Changes in Plan Qualification Requirements (which is section IV of this notice) and is identified as “New.”

If a plan, submitted between February 1, 2011 and January 31, 2012, is amended to reflect section 201 of WRERA, the Service will consider section 201 in issuing the determination letter, opinion, or advisory letter. If a noncalendar year plan, which does not have to adopt the WRERA section 201 amendment until after January 31, 2012, is submitted between February 1, 2011 and January 31, 2012 without being amended for section 201, then the Service will consider section 201, if applicable, during the next Cycle A or 6-year remedial amendment cycle submission period.

The Service will no longer include hurricane or disaster relief provisions, which formerly appeared in the Cumulative List of Changes in Plan Qualification Requirements. Although no longer listed

in this notice, hurricane and other disaster relief provisions continue to apply, if applicable, to individual plans. For information regarding tax relief provisions for taxpayers affected by disaster relief situations go to <http://www.irs.gov/newsroom/article/0,,id=108362,00.html>.

Except as provided below, the Service will not consider in its review of any determination, opinion, or advisory letter application, for the submission period that begins February 1, 2011, any:

- (1) guidance issued after October 1, 2010;
- (2) statutes enacted after October 1, 2010;
- (3) qualification requirements first effective in 2012 or later; or
- (4) statutory provisions that are first effective in 2011, for which there is no guidance identified in this notice.<sup>2</sup>

However, in order to be qualified, a plan must comply with all relevant qualification requirements, not just those on the 2010 Cumulative List.

The 2010 Cumulative List includes the following guidance issued after October 1, 2010:

- Notice 2010–84, 2010–51 I.R.B. 872, (item 14 in section IV of this notice). The Service will consider Notice 2010–84 in issuing an opinion, advisory, or determination letter in the case of a plan submitted between February 1, 2011 and January 31, 2012, if the plan has been amended to reflect section 2112 of SBJA, regarding in-plan Roth rollovers.
- Final regulations under § 411(a)(13) and § 411(b)(5) (75 Fed. Reg. 64123) (items 20 and 22 in section IV of this notice). The Service will consider the final regulations under § 411(a)(13) and § 411(b)(5) in issuing a determination letter in the case of an applicable defined benefit plan (within the meaning of § 411(a)(13)(C)) submitted between February 1, 2011 and January 31, 2012.
- Notice 2010–77, 2010–51 I.R.B. 851, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning

of § 411(a)(13)(C), to meet the requirements of § 411(a)(13) (other than § 411(a)(13)(A)) and § 411(b)(5) to the last day of the first plan year that begins on or after January 1, 2011. As provided in Notice 2010–77, the filing of a determination letter application in the Cycle A submission period may accelerate that deadline.

The Service will not consider § 414(x) (item 30 in section IV of this notice) in issuing opinion and advisory letters for pre-approved plans at this time.

With respect to matters addressed by proposed regulations identified in the footnotes of section IV of this notice, the Service's review of the plan will be based on a reasonable interpretation of the statute, existing final regulations, or other published guidance. For this purpose, compliance with proposed regulations will be treated as meeting that standard. However, a determination, opinion, or advisory letter cannot be relied on with respect to whether the plan complies with the proposed regulations.

Terminating plans must include all law changes in effect at the time of termination. See section 8 of Rev. Proc. 2007–44 regarding plan termination.

#### **IV. 2010 CUMULATIVE LIST OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS**

The following list consists of statutory provisions and associated guidance which reflect changes to plan qualification requirements. Miscellaneous guidance is also provided. The Service has identified below plan qualification requirements which were not on the 2009 or earlier Cumulative Lists as “(New).”

All items from the 2004 Cumulative List have been deleted from the 2010 Cumulative List. In addition, items from the 2005 Cumulative List that apply solely to defined benefit plans or ESOPs have been deleted from the 2010 Cumulative List. Thus, the 2010 Cumulative List contains those plan qualification requirements listed in the 2005 Cumulative List that are applicable to defined contribution pre-

<sup>2</sup> The Service will also not consider the requirements of § 436 or the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, Pub. L. 111–192, in its review of any determination, opinion, or advisory letter application submitted during the period beginning February 1, 2011 and ending January 31, 2012. See Notice 2010–77, 2010–51 I.R.B. 851, which extends the deadline for amending single-employer defined benefit plans to meet the requirements of §§ 401(a)(29) and 436 to the last day of the first plan year that begins on or after January 1, 2011.

approved plans, the plan qualification requirements listed in the 2006, 2007, 2008, and 2009 Cumulative Lists, as well as additional 2010 plan qualification requirements. These deletions have been made to enhance the utility of the cumulative list, by removing items that would have been previously reviewed in the case of a plan that was submitted during the initial Cycle A submission period (February 1, 2006 — January 31, 2007). However, if a plan has not been previously reviewed for items on earlier cumulative lists, it must still take those items into account. For example, a new plan that was established after the Cycle A submission period would be reviewed for items on the 2004 Cumulative List. Similarly, defined contribution pre-approved plans have not yet been reviewed for items on the 2005 Cumulative List and those items have been retained in this notice in order to facilitate review of those plans.

1. *401(a)*:

- Final Regulations under § 401(a) of the Code regarding permissible normal retirement ages were published on May 22, 2007 (72 Fed. Reg. 28604). (2006 C. L.).
  - Notice 2007–69, 2007–2 C.B. 468, provides temporary relief for certain pension plans under which the definition of normal retirement age may be required to be changed to comply with the regulations, but only until the first day of the first plan year that begins after June 30, 2008. (2007 C. L.).
  - Notice 2008–98, 2008–2 C.B. 1080, provides that the Service and Treasury intend to amend the normal retirement age regulations to change the effective date for governmental plans to plan years beginning on or after January 1, 2011. (2009 C. L.).
  - Notice 2009–86, 2009–46 I.R.B. 629, provides that the Service and Treasury intend to amend the normal retirement age regulations to change the effective date for governmental plans to plan years beginning on or after January 1, 2013. (New).

- Rev. Rul. 2008–40, 2008–2 C.B. 166, provides that the transfer of amounts from a trust under a plan qualified under § 401(a) to a nonqualified foreign trust is treated as a distribution from the transferor plan and that transfer of assets and liabilities from a qualified plan to a plan that satisfies § 1165 of the Puerto Rico Code is also treated as a distribution from the transferor plan. (2008 C. L.).
- Rev. Rul. 2008–45, 2008–2 C.B. 403, provides that the exclusive benefit rule of § 401(a) is violated if the sponsorship of a qualified retirement plan is transferred from an employer to an unrelated taxpayer and the transfer is not in connection with a transfer of business assets or operations from the employer to the unrelated taxpayer. (2008 C. L.).

2. *401(a)(4)*:

- Amendments to § 1.401(a)(4)–9 of the Regulations relating to new comparability plans were published on June 29, 2001 (66 Fed. Reg. 34535). (2005 C. L.).
- Rev. Rul. 2004–21, 2004–1 C.B. 544. (2005 C. L.).

3. *401(a)(5)*: Section 401(a)(5)(G) of the Code was amended by PPA '06 § 861(a)(1) with respect to governmental plans. (2008 C. L.).

4. *401(a)(9)*:

- PPA § 823 instructs the Secretary of the Treasury to issue regulations under which, for all years to which § 401(a)(9) applies, a § 414(d) governmental plan shall be treated as having complied with § 401(a)(9) if it complies with a reasonable good faith interpretation of § 401(a)(9). (New).
  - Final regulations under § 401(a)(9) were published on September 8, 2009 (74 Fed. Reg. 45993), which permit a governmental plan to comply with the required minimum distribution rules of § 401(a)(9) by using a reasonable and good faith interpretation of the statute. (2009 C. L.).
- Section 201(a) of WRERA added § 401(a)(9)(H) which provides a sus-

pension of the required minimum distribution rules for 2009 applicable to defined contribution plans. (New).

- Notice 2009–82, 2009–41 I.R.B. 491, provides guidance relating to the suspension of the required minimum distribution rules for 2009 applicable to defined contribution plans. (New).

5. *401(a)(26)*: Section 401(a)(26)(G) of the Code was amended by PPA '06 § 861(a)(1) with respect to governmental plans. (2008 C. L.).

6. *401(a)(35)*: PPA '06 § 901(a)(1) added § 401(a)(35) requiring that defined contribution plans provide employees with the freedom to divest publicly traded employer securities. (2008 C. L.).

- Notice 2006–107, 2006–2 C.B. 1114. (2008 C. L.).
- Notice 2008–7, 2008–1 C.B. 276, extends certain transitional guidance and transitional relief provided to certain defined contribution plans holding publicly traded employer securities under Notice 2006–107. (2008 C. L.).
- WRERA § 109(a) amended the definition of one-participant retirement plan under § 401(a)(35)(E)(iv). (2009 C. L.).
- Notice 2009–97, 2009–52 I.R.B. 972, extends the deadline to amend for § 401(a)(35) to the last day of the first plan year that begins on or after January 1, 2010. (New).
- Final regulations under § 401(a)(35) were published on May 19, 2010 (75 Fed. Reg. 27927). (New).

7. *401(a)(36)*: PPA '06 § 905(b) added § 401(a)(36) regarding distributions to a participant who has attained age 62 and who has not separated from employment at the time of the distribution. (2008 C. L.).

8. *401(a)(37)*: Section 104(a) of the HEART Act added Code § 401(a)(37) with respect to benefits payable on the death of a plan participant while performing qualified military service. (New).

- Notice 2010–15, 2010–6 I.R.B. 390, provides guidance regarding HEART Act § 104(a). (New).

9. *401(k) & 401(m)*<sup>3</sup>:

<sup>3</sup> Proposed amendments to the regulations under § 401(k) and § 401(m) were published on May 18, 2009 (74 Fed. Reg. 23134) and may be relied upon until final regulations are issued.

- Announcement 2007–59, 2007–1 C.B. 1448, provides that a plan will not fail to satisfy the requirements of a § 401(k) safe harbor plan because of a mid-year change to implement a designated Roth contribution program. (2007 C. L.).
  - PPA '06 § 826 modified the rules relating to distributions from a § 401(k) plan on account of a participant's hardship to permit the plan to treat a participant's beneficiary under the plan the same as the participant's spouse or dependent. (2008 C. L.).
    - Notice 2007–7, 2007–1 C.B. 395, provides guidance regarding PPA '06 § 826. (2008 C. L.).
    - Announcement 2007–59, 2007–1 C.B. 1448, provides that a plan will not fail to satisfy the requirements of a § 401(k) safe harbor plan because of a mid-year change to implement the PPA '06 § 826 hardship withdrawals. (2008 C. L.).
  - PPA '06 § 827 added § 401(k)(2)(B)(i)(V) which permits reservists called to active duty after September 11, 2001 and before 2008 to take in-service distributions from a § 401(k) plan. (2008 C. L.).
  - Section 107(a) of the HEART Act extends the applicability of the qualified reservist distribution to individuals ordered or called to active duty after December 31, 2007. (2009 C. L.).
    - Notice 2010–15, 2010–6 I.R.B. 390, provides guidance regarding HEART Act § 107. (New).
  - PPA '06 § 861(a)(2) amended § 401(k)(3)(G) with respect to governmental plans. (2008 C. L.).
  - PPA '06 § 902(e)(3) eliminates the gap period income rule for excess contributions in § 401(k)(8)(A)(i). (2008 C. L.).
  - PPA '06 § 902 added § 401(k)(13) with respect to qualified automatic contribution arrangements. (2008 C. L.).
    - Final regulations under § 401(k) with respect to qualified automatic contribution arrangements were published on February 24, 2009 (74 Fed. Reg. 8200). (2009 C. L.).
    - Rev. Rul. 2009–30, 2009–39 I.R.B. 391, provides information with respect to automatic contribution increases under automatic contribution arrangements. (2009 C. L.).
  - Notice 2009–65, 2009–39 I.R.B. 413, provides sample amendments that plan sponsors can use to add automatic contribution features to their plans. (2009 C. L.).
  - PPA '06 § 902(e)(3) eliminates the gap period income rule for excess aggregate contributions in § 401(m)(6)(A). (2008 C. L.).
  - PPA '06 § 902 added § 401(m)(12) with respect to qualified automatic contribution arrangements. (2008 C. L.).
    - Final regulations under § 401(m) with respect to qualified automatic contribution arrangements were published on February 24, 2009 (74 Fed. Reg. 8200). (2009 C. L.).
10. *402(c)(2)(A)*: PPA '06 § 822(a) amended § 402(c)(2)(A) to permit nontaxable distributions from a qualified plan to be directly rolled over tax-free to either another qualified plan or a § 403(b) plan if the separate accounting requirements are met. (2008 C. L.).
11. *402(c)(11)*: PPA '06 § 829(a)(1) added § 402(c)(11) to allow nonspouse beneficiaries to directly roll over distributions from a qualified plan to an individual retirement plan. (2008 C. L.).
- Notice 2007–7, 2007–1 C.B. 395, provides guidance regarding § 402(c)(11). (2008 C. L.).
  - WRERA § 108(f) requires that plans provide for nonspouse beneficiary rollovers under § 402(c)(11), effective for plan years beginning after December 31, 2009. (2009 C. L.).
12. *402(f)*: PPA '06 § 1102(a) provides that notice required to be provided under § 402(f) may be provided as much as 180 days before the annuity starting date.<sup>4</sup> (2008 C. L.).
- Notice 2007–7, 2007–1 C.B. 395, provides guidance regarding PPA '06 § 1102. (2008 C. L.).
  - Notice 2009–68, 2009–39 I.R.B. 423, provides two safe harbor explanations that may be provided to recipients of eligible rollover distributions from an employer to satisfy § 402(f). (2009 C. L.).
- WRERA § 108(f)(2) amended § 402(f)(2)(A) with respect to the definition of eligible rollover distribution. (2009 C. L.).
13. *402(g)(2)*: WRERA § 109(b)(3) amended § 402(g)(2)(A)(ii) to eliminate the distribution of gap period earnings with excess deferrals. (2009 C. L.).
14. *402A*:
- Final Regulations under § 401(k) and § 401(m) of the Code relating to designated Roth contributions were published on January 3, 2006 (71 Fed. Reg. 6). (2005 C. L.).
    - Notice 2006–44, 2006–1 C.B. 889, provides a sample amendment for Roth § 401(k) plans. (2006 C. L.).
  - Final Regulations under § 402A of the Code were published on April 30, 2007 (72 Fed. Reg. 21103). (2006 C. L.).
  - SBJA § 2112 added § 402A(c)(4) which permits rollovers from a plan account other than a designated Roth account to the plan's designated Roth account. (New).
    - Notice 2010–84, 2010–51 I.R.B. 872, provides guidance regarding § 402A(c)(4). (New).
15. *408A(e)*: PPA '06 § 824 added § 408A(e) which permits rollovers to Roth IRAs from accounts that are not designated Roth accounts that are part of qualified plans, § 403(b) plans, and § 457 plans. (2008 C. L.).
- Notice 2008–30, 2008–1 C.B. 638, provides guidance regarding § 408A(e). (2008 C. L.).
16. *409*:
- Final Regulations were published on December 20, 2006 (71 Fed. Reg. 76134) that provide guidance concerning requirements under § 409(p) for ESOPs holding stock of S corporations. (2006 C. L.).
17. *410(b)*: Final Regulations were published on July 21, 2006 (71 Fed. Reg. 41357) permitting some employees of tax-exempt organizations to be excluded when

<sup>4</sup> Proposed regulations under § 402(f) were published on October 9, 2008 (73 Fed. Reg. 59575) and may be relied upon until final regulations are issued.

determining whether a § 401(k) plan meets the § 410(b) minimum coverage requirements. (2006 C. L.).

18. *411(a)*:

- Rev. Rul. 2003–65, 2003–1 C.B. 1035. (2005 C. L.).
- Amendments to § 1.411(d)–3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to the interaction between the anti-cutback rules of § 411(d)(6) and the nonforfeitability requirements of § 411(a). (2006 C. L.).
- Section 411(a) of the Code was amended by § 904 of PPA '06 to provide for faster vesting of employer nonelective contributions. (2008 C. L.).
  - Notice 2007–7, 2007–1 C.B. 395, provides guidance regarding § 411(a), as amended by § 904 of PPA '06. (2008 C. L.).

19. *411(a)(11)*:

- PPA '06 § 1102(a) provides that notice required to be provided under § 411(a)(11) may be provided as much as 180 days before the annuity starting date. Section 1102(b) of PPA '06 requires that the notice under § 411(a)(11) also include a description of the consequences of failing to defer receipt of a distribution.<sup>5</sup> (2008 C. L.).
  - Notice 2007–7, 2007–1 C.B. 395, provides guidance regarding PPA '06 § 1102. (2008 C. L.).

20. *411(a)(13)*: PPA '06 § 701(b)(2) added § 411(a)(13) with respect to special vesting rules for applicable defined benefit plans, such as cash balance plans. (2008 C. L.).

- Notice 2007–6, 2007–1 C.B. 272, provides guidance regarding cash balance plans and other hybrid defined benefit plans. (2008 C. L.).
- WRERA § 107(b)(2) amended § 411(a)(13)(A). (2009 C. L.).

- Notice 2009–97, 2009–52 I.R.B. 972, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(a)(13) (other than § 411(a)(13)(A)) to the last day of the first plan year that begins on or after January 1, 2010. (New).
- Final Regulations under § 411(a)(13) were published on October 19, 2010 (75 Fed. Reg. 64123).<sup>6</sup> (New).
- Notice 2010–77, 2010–51 I.R.B. 851, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(a)(13) (other than § 411(a)(13)(A)) to the last day of the first plan year that begins on or after January 1, 2011. (New).

21. *411(b)(1)*<sup>7</sup>:

- Rev. Rul. 2008–7, 2008–1 C.B. 419, addresses (1) the application of the backloading provisions of § 411(b)(1)(A), (B), and (C) to defined benefit cash balance plans and (2) the use of a “greater of” formula in the instance of a conversion of a defined benefit pension plan to a cash balance plan, including limited § 7805(b) relief. (2008 C. L.).

22. *411(b)(5)*: PPA '06 § 701(b)(1) added § 411(b)(5) with respect to applicable defined benefit plans, such as cash balance plans, and special rules relating to age. (2008 C. L.).

- Notice 2007–6, 2007–1 C.B. 272, provides guidance regarding cash balance plans and other hybrid defined benefit plans. (2008 C. L.).
- WRERA § 107(b)(1) amended § 411(b)(5). (2009 C. L.).
- Notice 2009–97, 2009–52 I.R.B. 972, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning

of § 411(a)(13)(C), to meet the requirements of § 411(b)(5) to the last day of the first plan year that begins on or after January 1, 2010. (New).

- Final Regulations under § 411(b)(5) were published on October 19, 2010 (75 Fed. Reg. 64123).<sup>8</sup> (New).
- Notice 2010–77, 2010–51 I.R.B. 851, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(b)(5) to the last day of the first plan year that begins on or after January 1, 2011. (New).

23. *411(d)(3)*:

- Rev. Rul. 2007–43, 2007–2 C.B. 45, provides guidance regarding the partial termination of a defined contribution plan. (2007 C. L.).

24. *411(d)(6)*:

- Amendments to § 1.411(d)–3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to the interaction between the anti-cutback rules of § 411(d)(6) and the nonforfeitability requirements of § 411(a). (2006 C. L.).
- Section 645(b)(3) of EGTRRA directed the Secretary of the Treasury to issue regulations under § 411(d)(6)(B). (2005 C. L.).
  - Section 1.411(d)–3 of the Regulations was published on August 12, 2005 (70 Fed. Reg. 47109). (2005 C. L.).
  - Amendments to § 1.411(d)–3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to a utilization test. (2006 C. L.).
- Section 411(d)(6)(D) and § 411(d)(6)(E) of the Code were added by § 645 of EGTRRA to permit the elimination of certain optional forms of benefit under certain conditions. (2005 C. L.).

<sup>5</sup> Proposed regulations under § 411(a)(11) were published on October 9, 2008 (73 Fed. Reg. 59575). Until final regulations are issued, a plan will be treated as complying with § 411(a)(11) if (1) the plan complies with either the proposed regulations or Q&A-32 and Q&A-33 in Notice 2007–7; or (2) if the plan administrator makes a reasonable attempt to comply with § 411(a)(11).

<sup>6</sup> Proposed regulations under § 411(a)(13) were published on October 19, 2010 (75 Fed. Reg. 64197) and may be relied upon until final regulations are issued.

<sup>7</sup> Proposed regulations under § 411(b)(1) were published on October 19, 2010 (75 Fed. Reg. 64197) with respect to a variable interest crediting rate that can potentially be negative in any given year. Proposed regulations under § 411(b)(1) were published on June 18, 2008 (73 Fed. Reg. 34665) with respect to the application of the accrual rule where plan benefits are determined on the basis of the greater of two or more separate formulas.

<sup>8</sup> Proposed regulations under § 411(b)(5) were published on October 19, 2010 (75 Fed. Reg. 64197) and may be relied upon until final regulations are issued.

- Section 1.411(d)-4, Q&A-2(e) of the Regulations was published on January 25, 2005 (70 Fed. Reg. 3475) to implement § 411(d)(6)(E). (2005 C. L.).

25. 412:

- Rev. Rul. 2004-20, 2004-1 C.B. 546, provides guidance with respect to whether a qualified pension plan can be a § 412(i) plan if the plan holds life insurance contracts and annuity contracts for benefits at normal retirement age in excess of a participant's benefits at normal retirement age under the plan. (2005 C. L.).
- Notice 2004-59, 2004-2 C.B. 447, provides guidance with respect to restrictions placed on plan amendments following an employer's election of an alternative deficit reduction contribution. (2005 C. L.).

26. 414(d): PPA '06 § 906(a)(1) added language to the definition of governmental plan in § 414(d) with respect to Indian tribal governments. (2008 C. L.).

- Notice 2006-89, 2006-2 C.B. 772, provides transition relief for plans subject to PPA '06 § 906. (2008 C. L.).
- Notice 2007-67, 2007-2 C.B. 467, extends the transition relief provided in Notice 2006-89. (2008 C. L.).

27. 414(f)(6): PPA '06 § 1106(b) added § 414(f)(6) with respect to a multiemployer status election. Section 6611(a)(2) and (b)(2) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 amends § 414(f)(6). (2008 C. L.).

28. 414(u):

- Section 104(b) of the HEART Act amended § 414(u) of the Code by adding § 414(u)(9) regarding how a plan may provide benefit accruals for a person who dies or becomes disabled while performing qualified military service. (New).
- Notice 2010-15, 2010-6 I.R.B. 390, provides guidance regarding HEART Act § 104(b). (New).
- Section 105(b)(1) of the HEART Act added § 414(u)(12) with respect to

the treatment of differential wage payments during the period a person, while on active duty, is performing service in the uniformed services. (New).

- Notice 2010-15, 2010-6 I.R.B. 390, provides guidance regarding HEART Act § 105(b)(1). (New).

29. 414(w): PPA '06 § 902(d)(1) added § 414(w) with respect to eligible automatic contribution arrangements. (2008 C. L.).

- WRERA § 109(b)(4), (5), and (6) amended § 414(w)(3), (5), and (6) respectively. (2009 C. L.).
- Final regulations under § 414(w) with respect to eligible automatic contribution arrangements were published on February 24, 2009 (74 Fed. Reg. 8200). (2009 C. L.).
- Rev. Rul. 2009-30, 2009-39 I.R.B. 391, provides information with respect to automatic contribution increases under automatic contribution arrangements. (2009 C. L.).
- Notice 2009-65, 2009-39 I.R.B. 413, provides sample amendments that plan sponsors can use to add automatic contribution features to their plans. (2009 C. L.).

30. 414(x): PPA '06 § 903(a) added § 414(x) with respect to special rules for eligible combined plans that consist of a defined benefit plan and a qualified cash or deferred arrangement. (New).

31. 415:

- WRERA § 103(a) changed the deadline to adopt PFEA amendments from the end of the 2008 plan year to the end of the 2009 plan year. (2009 C. L.).
- Section 415(b)(2)(E)(ii) of the Code was amended by § 303 of PPA '06 regarding the interest rate assumption for applying benefit limitations to lump sum distributions. (2008 C. L.).
- PPA '06 § 832(a) amended § 415(b)(3) to eliminate the active participant restriction from the "average compensation for high 3 years" definition. (2008 C. L.).
- PPA '06 § 906(b)(1)(A) & (B) modified §§ 415(b)(2)(H) and 415(b)(10), respectively, regarding Indian tribal governments. (2008 C. L.).

- PPA '06 § 867(a) amended § 415(b)(11) to remove the 100% of compensation limitation for a church plan participant if the participant has never been a highly compensated employee of the church. (2008 C. L.).
- Final Regulations under § 415 were published on April 5, 2007 (72 Fed. Reg. 16878). (2006 C. L.).
- WRERA § 103(b)(2)(B)(i) amended § 415(b)(2)(E)(v) to change the mortality table to the applicable mortality table within the meaning of § 417(e)(3)(B). (2009 C. L.).

32. 416:

- PPA '06 § 902(c)(1) amended § 416(g)(4)(H)(i) by inserting § 401(k)(13) of the Code. (2008 C. L.).
- PPA '06 § 902(c)(2) amended § 416(g)(4)(H)(ii) by inserting § 401(m)(12) of the Code. (2008 C. L.).

33. 417:

- Final Regulations under § 417(a)(3) were published on March 24, 2006 (71 Fed. Reg. 14798) regarding the disclosure of the relative value of optional forms of benefit. (2006 C. L.).
- PPA '06 § 1102(a) provides that notice required to be provided under § 417 may be provided as much as 180 days before the annuity starting date.<sup>9</sup> (2008 C. L.).
- Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding PPA '06 § 1102. (2008 C. L.).
- PPA '06 § 302(b) amended the applicable interest rate and mortality table to be used for determining the present value of lump sum distributions in § 417(e)(3). (2008 C. L.).
- Rev. Rul. 2007-67, 2007-2 C.B. 1047, addresses the mortality tables required by § 417(e)(3). (2008 C. L.).
- Notice 2008-30, 2008-1 C.B. 638, provides guidance regarding PPA '06 § 302. (2008 C. L.).
- WRERA § 103(b)(2)(A) amended § 417(e)(3)(D)(i) by striking "clause (ii)" and inserting "subparagraph (C)". (2009 C. L.).

<sup>9</sup> Proposed regulations under § 417 were published on October 9, 2008 (73 Fed. Reg. 59575) and may be relied upon until final regulations are issued.

- PPA '06 § 1004(a) added the qualified optional survivor annuity benefit to § 417. (2008 C. L.).
  - Notice 2008–30, 2008–1 C.B. 638, provides guidance regarding PPA '06 § 1004. (2008 C. L.).

#### 34. 420:

- Section 6613 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, amends § 420(c)(3)(A) regarding minimum cost requirements for transfers of excess pension assets to retiree health accounts. (2007 C. L.).
- PPA '06 § 114(d)(1) modified the definition of the term "excess pension assets" in § 420(e)(2). Section 6612(b) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, amends § 420(e)(2)(B). (2007 C. L.).

35. 432: PPA '06 § 212(a) added § 432 which requires that a funding improvement plan or a rehabilitation plan be adopted for multiemployer plans in endangered or critical status and provides for certain benefit reductions.<sup>10</sup> (2008 C. L.).

- WRERA § 204 provides a temporary delay of designation of multiemployer plans in endangered or critical status. (2009 C. L.).
  - Notice 2009–31, 2009–16 I.R.B. 856, as modified by Notice 2009–42, 2009–20 I.R.B. 1011, provides election and notice procedures for multiemployer plans under WRERA § 204. (2009 C. L.).
  - Rev. Proc. 2009–43, 2009–40 I.R.B. 460, provides procedures with respect to the revocation of elections by multiemployer plans to freeze funded status under WRERA § 204. (2009 C. L.).
- WRERA § 205 provides a temporary extension of the funding improvement or rehabilitation periods for multiemployer plans in endangered or critical status for 2008 or 2009. (2009 C. L.).
  - Notice 2009–31, 2009–16 I.R.B. 856, as modified by Notice 2009–42, 2009–20 I.R.B. 1011,

provides election and notice procedures for multiemployer plans under WRERA § 205. (2009 C. L.).

#### 36. Miscellaneous:

- Rev. Rul. 2005–55, 2005–2 C.B. 284, provides guidance with respect to medical reimbursement accounts under a profit sharing plan. (2005 C. L.).
- Section 1.401(a)–21 of the Regulations was published on October 20, 2006 (71 Fed. Reg. 61877) setting forth standards for the use of an electronic medium to provide applicable notices to recipients or to make participant elections. (2006 C. L.).
- Notice 2008–21, 2008–1 C.B. 431, provides transitional guidance for 2008 under § 436 for small plans with end-of-year valuation dates. (2008 C. L.).
- Notice 2008–73, 2008–2 C.B. 717, expands transition relief of Notice 2008–21. (2008 C. L.).
- Rev. Rul. 2009–31, 2009–39 I.R.B. 395, provides guidance with respect to annual paid time off contributions. (2009 C. L.).
- Rev. Rul. 2009–32, 2009–39 I.R.B. 398, provides guidance with respect to paid time off contributions at termination of employment. (2009 C. L.).

The following guidance contains sample or model amendments: Notice 2006–44, 2006–1 C.B. 889 (Roth § 401(k) plans); Notice 2009–65, 2009–39 I.R.B. 413 (automatic contribution features); and Notice 2009–82, 2009–41 I.R.B. 491 (suspension of the minimum distribution requirement for 2009).

#### DRAFTING INFORMATION

The principal author of this notice is Angelique Carrington of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans taxpayer assistance answering service at 1–877–829–5500 (a toll-free number) or e-mail Ms. Carrington at [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov).

## Interim Guidance on the Application of Section 3402(t) to Payment Card Transactions

### Notice 2010–91

This notice provides interim guidance on the application of § 3402(t) of the Internal Revenue Code to payments made by credit, debit, stored value, and other payment cards. Commenters on the proposed regulations (REG–158747–06, 2009–4 I.R.B. 362 [73 FR 74082 (Dec. 5, 2008)]) raised significant implementation concerns regarding the contracting, processing, and systems changes necessary to apply § 3402(t) withholding and related reporting to payment card transactions. The Treasury Department and the IRS anticipate that the final regulations will reserve for future guidance the issue of applying § 3402(t) to payment card transactions. Consistent with this anticipated reservation of the issue, this notice provides that the withholding requirements under § 3402(t) and the related reporting requirements will not apply to payments made by payment card until further guidance is issued; and will not apply for any calendar year beginning earlier than at least 18 months from the date such guidance is finalized (and thus will not apply for the 2012 calendar year). Finally, this notice requests comments on all aspects of the potential application of § 3402(t) to payment card transactions, and in particular on approaches that will help implement these requirements.

#### BACKGROUND

Section 3402(t) was added by § 511 of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109–222, 120 Stat. 345 (TIPRA), which was enacted on May 17, 2006. Section 3402(t)(1) provides that the Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) making any payment to any person providing any property or services (including any payment made in connection with a government voucher or certificate program which functions as a payment

<sup>10</sup> Proposed regulations under § 432 were published on March 18, 2008 (73 Fed. Reg. 14417) and may be relied upon until final regulations are issued.

for property or services) shall deduct and withhold from such payment a tax in an amount equal to 3% of such payment. There are many exceptions to the § 3402(t) withholding requirements, including the exception provided by § 3402(t)(2)(G) for payment made by a political subdivision of a State (or an instrumentality of a political subdivision of a State) which makes less than \$100,000,000 of payments for property or services annually (other than payments otherwise exempt from § 3402(t) withholding, such as payroll payments). TIPRA originally provided that § 3402(t) applies to payments made after December 31, 2010.

Notice 2008–38, 2008–1 C.B. 683, published on March 31, 2008, invited public comments on guidance under § 3402(t). Notice 2008–38 requested specific comments on the application of § 3402(t) to payment cards. Proposed regulations under §§ 3402(t), 3406, 6011, 6051, 6071, and 6302 were published on December 5, 2008 (REG–158747–06, 2009–4 I.R.B. 362 [73 FR 74082]). Subsequently, § 1511 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, 123 Stat. 115, amended the effective date of § 3402(t) withholding, so that it applies only to payments made after December 31, 2011. The Treasury Department and the IRS are currently developing final regulations under § 3402(t).

On July 30, 2008, following the enactment of § 3402(t), § 6050W was enacted as part of the Housing Assistance Tax Act of 2008, Div. C of the Housing and Economic Recovery Act of 2008, Pub. L. No. 110–289, 122 Stat. 2654. Section 6050W requires merchant acquiring entities that make payment to merchants and other participating payees in settlement of reportable payment card transactions to report the gross amount of these transactions for each payee for each calendar year. This reporting requirement applies to payment card transactions for calendar years beginning after December 31, 2010. Final regulations under § 6050W were published on August 16, 2010 (T.D. 9496, 2010–43 I.R.B. 484 [75 FR 49821]).

Under proposed § 31.3402(t)–3(e), payments subject to withholding under § 3402(t) include payments made by payment card. Numerous commenters indicated that applying § 3402(t) with-

holding and related reporting requirements to payment card transactions would be difficult to administer and noted that these transactions will already be reported under § 6050W. This notice responds to the concerns raised and the need for taxpayers to begin the implementation process to comply with the requirements of § 3402(t).

## GUIDANCE

The withholding requirements of § 3402(t) and the related reporting requirements will not apply to any payment made by payment card for any calendar year beginning earlier than at least 18 months from the date further guidance is finalized for § 3402(t) withholding on payments by payment card (and thus will not apply for the 2012 calendar year).

This guidance does not apply to any payment made using a convenience check. Convenience checks are accepted and processed through the banking system in the same manner as traditional checks.

For purposes of this notice, the following definitions apply:

(1) *Payment card transaction* means any transaction in which a payment card, or any account number or other indicia associated with a payment card, is accepted as payment;

(2) *Payment card* means any card, including any stored value card, issued pursuant to an agreement or arrangement that provides for—

(A) One or more issuers of such cards;

(B) A network of persons unrelated to each other, and to the issuer, who agree to accept such cards as payment; and

(C) Standards and mechanisms for settling the transactions between the merchant acquiring entities and the persons who agree to accept the cards as payment;

(3) *Stored value card* means any card with a prepaid value, including any gift card;

(4) *Convenience check* means a check issued in connection with a payment card account;

(5) *Merchant acquiring entity* means the bank or other organization that has the contractual obligation to make payment to participating payees in settlement of payment card transactions; and

(6) *Participating payee* means a person who agrees to accept payment cards as payment.

## REQUEST FOR COMMENTS

Comments are requested on all aspects of the potential application of the withholding requirements under § 3402(t) and the related reporting requirements to payment card transactions. Comments must be submitted by March 28, 2011. All materials submitted will be available for public inspection and copying. Comments should be submitted to Internal Revenue Service, CC:PA:LPD:RU (Notice 2010–91), Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20224. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to the Courier’s Desk, 1111 Constitution Avenue, NW, Washington, DC 20224, Attn: CC:PA:LPD:RU (Notice 2010–91), Room 5203. Submissions may also be sent electronically via the internet to the following email address: [Notice.comments@irscounsel.treas.gov](mailto:Notice.comments@irscounsel.treas.gov). Include the notice number (Notice 2010–91) in the subject line.

## DRAFTING INFORMATION

The principal author of this notice is A. G. Kelley of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) though other Treasury Department and IRS officials participated in its development. For further information on the submission of comments or the comments submitted, please contact Richard Hurst at (202) 622–7180 (not a toll-free number). For further information on all other provisions of this notice, please contact A. G. Kelley at (202) 622–6040 (not a toll-free number).

## Foreign Tax Credit Guidance Under Section 909

### Notice 2010–92

#### SECTION 1. OVERVIEW

This notice provides guidance concerning section 909 of the Internal Revenue Code (“Code”). The Treasury Department and Internal Revenue Service (“IRS”) anticipate that this will be the first of several items of published guidance concerning section 909. This notice primarily addresses the application of section 909 to

foreign income taxes paid or accrued by a section 902 corporation in taxable years beginning on or before December 31, 2010 (“pre-2011 taxable years”). The Treasury Department and IRS expect to issue regulations that incorporate the guidance described in this notice.

Section 2 of this notice provides background information with respect to section 909. Section 3 provides rules for determining whether foreign income taxes paid or accrued by a section 902 corporation in pre-2011 taxable years (“pre-2011 taxes”) are suspended under section 909 in taxable years beginning after December 31, 2010 (“post-2010 taxable years”) of a section 902 corporation. Section 4 identifies an exclusive list of arrangements that will be treated as giving rise to foreign tax credit splitting events in pre-2011 taxable years (“pre-2011 splitter arrangements”) and provides guidance on determining the amount of related income and pre-2011 taxes paid or accrued with respect to pre-2011 splitter arrangements. Section 5 provides guidance concerning the application of section 909 to partnerships and trusts. Section 6 discusses the interaction between section 909 and other Code provisions. Section 7 provides the effective date of the regulations described in this notice. Section 8 solicits comments and provides contact information.

Unless otherwise provided, the guidance described in this notice applies only to pre-2011 taxes and does not apply to foreign income taxes paid or accrued in post-2010 taxable years. Future guidance will address the application of section 909 to foreign income taxes paid or accrued in post-2010 taxable years. The Treasury Department and IRS expect that future guidance will provide that foreign tax credit splitting events in post-2010 taxable years will at least include all of the arrangements identified in section 4 of this notice. This future guidance may also provide that section 909 applies to other transactions or arrangements not identified in section 4 of this notice, but any such guidance relating to the definition of a foreign tax credit splitting event will apply only with respect to foreign income taxes paid or accrued in post-2010 taxable years.

Section 909 does not address the determination of the person who paid a foreign income tax for U.S. federal income tax purposes. See §1.901–2(f). Further, nothing

in this notice should be construed as providing guidance with respect to that determination.

## SECTION 2. BACKGROUND

### .01 Section 909

Section 211 of the legislation commonly referred to as the Education Jobs and Medicaid Assistance Act (“EJMAA”), enacted on August 10, 2010 (P.L. 111–226, 124 Stat. 2389 (2010)), added section 909 to the Code to address situations where foreign income taxes have been separated from the related income. Section 909(a) provides that if there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by a taxpayer, such tax shall not be taken into account for federal tax purposes before the taxable year in which the related income is taken into account by the taxpayer. Section 909(b) provides special rules with respect to a “section 902 corporation,” which is defined in section 909(d)(5) as any foreign corporation with respect to which one or more domestic corporations meets the ownership requirements of section 902(a) or (b) (a “section 902 shareholder” of the relevant section 902 corporation). If there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by a section 902 corporation, the tax shall not be taken into account for purposes of section 902 or 960, or for purposes of determining earnings and profits under section 964(a), before the taxable year in which the related income is taken into account by such section 902 corporation or a section 902 shareholder. Thus, the tax is not added to the section 902 corporation’s pool of “post-1986 foreign income taxes” (as defined in section 902(c)(2) and §1.902–1(a)(8)), and its pool of “post-1986 undistributed earnings” (as defined in section 902(c)(1) and §1.902–1(a)(9)) is not reduced by such tax. Accordingly, section 909 suspends foreign income taxes paid or accrued by a section 902 corporation at the level of the payor section 902 corporation. In the case of a partnership, section 909(a) and (b) apply at the partner level, and, except as otherwise provided by the Secretary, a similar rule applies in the case of an S corporation or trust. Section 909(c)(1).

For purposes of section 909, there is a foreign tax credit splitting event with respect to a foreign income tax if the related income is (or will be) taken into account by a covered person. Section 909(d)(1). Section 909 does not suspend foreign income taxes if the same person pays the tax but takes into account the related income in a different taxable period (or periods) due to, for example, timing differences between the U.S. and foreign tax accounting rules. The term “foreign income tax” means any income, war profits, or excess profits tax paid or accrued to any foreign country or to any possession of the United States. Section 909(d)(2). A foreign income tax includes any tax paid in lieu of such a tax within the meaning of section 903. Section 909(d)(3) provides that the term “related income” means, with respect to any portion of any foreign income tax, the income (or, as appropriate, earnings and profits) to which such portion of the foreign income tax relates. The term “covered person” means, with respect to any person who pays or accrues a foreign income tax (the “payor”): (1) any entity in which the payor holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value); (2) any person that holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value) in the payor; (3) any person that bears a relationship to the payor described in section 267(b) or 707(b); and (4) any other person specified by the Secretary. Section 909(d)(4).

Except as otherwise provided by the Secretary, any foreign income tax not currently taken into account by reason of section 909 is taken into account as a foreign income tax paid or accrued in the taxable year in which, and to the extent that, the taxpayer, the section 902 corporation or a section 902 shareholder (as the case may be) takes the related income into account under chapter 1 of the Code. Section 909(c)(2). Notwithstanding this general rule, foreign income taxes are translated into U.S. dollars under the general rules of section 986 and not as if they were paid or accrued in the year in which the related income is taken into account. Section 909(c)(2).

Section 909(e) provides that the Secretary may issue such regulations or other guidance as is necessary or appropriate



to carry out the purposes of section 909, including guidance providing appropriate exceptions from the provisions of section 909 and for its proper application to hybrid instruments. The Joint Committee on Taxation's technical explanation of the revenue provisions of EJMAA states that such guidance may address the proper application of section 909 in cases involving disregarded payments, group relief, or other arrangements having a similar effect. Staff of the Joint Committee on Taxation, Technical Explanation of the Revenue Provisions of the Senate Amendment to the House Amendment to the Senate Amendment to H.R. 1586, Scheduled For Consideration by the House of Representatives on August 10, 2010, at 6 (August 10, 2010) (the "JCT Explanation"). The JCT Explanation also states that such guidance may provide successor rules addressing circumstances such as when, with respect to a foreign tax credit splitting event, the person who pays or accrues the foreign income tax or any covered person is liquidated. *Id.*

#### .02 Effective date

Section 211(c)(1) of EJMAA provides that section 909 applies to foreign income taxes paid or accrued (including foreign income taxes paid or accrued by section 902 corporations) in post-2010 taxable years. Section 211(c)(2) of EJMAA provides that section 909 also applies to pre-2011 taxes, but only for purposes of applying sections 902 and 960 to periods after December 31, 2010. For this purpose, there is no increase to a section 902 corporation's earnings and profits for the amount of any pre-2011 taxes to which section 909 applies that were previously deducted in computing earnings and profits in a pre-2011 taxable year. EJMAA, section 211(c) (flush text).

The JCT Explanation clarifies that the section 902 effective date rule "applies for purposes of applying sections 902 and 960 to dividends paid, and inclusions under section 951(a) that occur, in taxable years beginning after December 31, 2010." JCT Explanation at 6-7. Consistent with the JCT Explanation, the Treasury Department and IRS intend to issue regulations providing that section 909 does not apply in computing foreign taxes deemed paid under section 902 or 960 before the first

day of the section 902 corporation's first post-2010 taxable year.

The regulations described in this notice will also provide guidance on the application of the section 909 effective date to situations involving partnerships. Specifically, in the case of a section 902 corporation that is a partner in a partnership, the section 902 corporation's distributive share of foreign income taxes paid or accrued by the partnership in a pre-2011 taxable year of the partnership that is included in a post-2010 taxable year of the section 902 corporation will be treated as a tax paid or accrued by the section 902 corporation in a post-2010 taxable year. See §§1.702-1(a)(6), 1.706-1(a)(1).

#### .03 Section 901 Proposed Regulations Issued in 2006

Section 909 was enacted to address concerns about the inappropriate separation of foreign income taxes and related income. These concerns were also the basis for the issuance in 2006 of proposed regulations under section 901 (the "2006 proposed regulations") concerning the determination of the person who paid a foreign income tax for foreign tax credit purposes. 71 F.R. 44240 (Aug. 4, 2006). The Treasury Department and IRS are evaluating the 2006 proposed regulations following the enactment of section 909. In this regard, the Treasury Department and IRS do not intend to finalize the portion of the 2006 proposed regulations relating to the determination of the person who paid a foreign income tax with respect to the income of a reverse hybrid. See Prop. Reg. §1.901-2(f)(2)(iii). Comments are solicited on whether other portions of the 2006 proposed regulations should be finalized or modified in light of the enactment of section 909.

#### SECTION 3. TREATMENT OF PRE-2011 TAXES

The Treasury Department and IRS will issue regulations providing that pre-2011 taxes described in paragraphs (a) through (d) of this section 3 will not be suspended under section 909:

(a) Any pre-2011 taxes that were not paid or accrued in connection with a pre-2011 splitter arrangement identified in section 4 of this notice;

(b) Any pre-2011 taxes that were paid or accrued in connection with a pre-2011 splitter arrangement identified in section 4 of this notice ("pre-2011 split taxes") but that were deemed paid under section 902(a) or 960 on or before the last day of the section 902 corporation's last pre-2011 taxable year;

(c) Any pre-2011 split taxes if either (1) the payor section 902 corporation took the related income into account in a pre-2011 taxable year or (2) a section 902 shareholder took the related income into account on or before the last day of the section 902 corporation's last pre-2011 taxable year; and

(d) Any pre-2011 split taxes paid or accrued by a section 902 corporation in taxable years of such section 902 corporation beginning before January 1, 1997 (because it is unlikely that material amounts of foreign income taxes described in that paragraph were accumulated and not previously deemed paid).

To the extent that the section 902 corporation paid or accrued pre-2011 split taxes that are not described in paragraphs (a) through (d) above, section 909 will apply to such pre-2011 split taxes for purposes of applying sections 902 and 960 in post-2010 taxable years of the section 902 corporation. Accordingly, these taxes will be removed from the section 902 corporation's pools of post-1986 foreign income taxes and suspended under section 909 as of the first day of the section 902 corporation's first post-2010 taxable year.

#### SECTION 4. PRE-2011 SPLITTER ARRANGEMENTS

##### .01 Overview

This section provides an exclusive list of arrangements that will be treated as giving rise to foreign tax credit splitting events for purposes of applying section 909 to pre-2011 taxes and provides guidance on identifying the pre-2011 split taxes and related income with respect to each such arrangement. As noted previously, future guidance may identify additional transactions or arrangements to which section 909 applies (including, for example, additional arrangements involving group relief regimes), although any such guidance will apply only with respect to

foreign taxes paid or accrued in post-2010 taxable years.

### *.02 Reverse Hybrid Structures*

A reverse hybrid structure exists when a section 902 corporation owns an interest in a reverse hybrid. A reverse hybrid is an entity that is a corporation for U.S. federal income tax purposes but is a pass-through entity or a branch under the laws of a foreign country imposing tax on the income of the entity. As a result, the owner of the reverse hybrid is subject to tax on the income of the entity under foreign law.

A pre-2011 splitter arrangement involving a reverse hybrid structure exists when pre-2011 taxes are paid or accrued by a section 902 corporation with respect to income of a reverse hybrid that is a covered person with respect to the section 902 corporation. A pre-2011 splitter arrangement involving a reverse hybrid structure may exist even if the reverse hybrid has a deficit in earnings and profits for a particular year (for example, due to a timing difference). Such taxes paid or accrued by the section 902 corporation are pre-2011 split taxes. The related income is the earnings and profits (computed for U.S. federal income tax purposes) of the reverse hybrid attributable to the activities of the reverse hybrid that gave rise to income included in the foreign tax base with respect to which the pre-2011 split taxes were paid or accrued. Accordingly, related income of the reverse hybrid would not include any item of income or expense attributable to a disregarded entity (as defined in §301.7701-2(c)(2)(i)) owned by the reverse hybrid if income attributable to the activities of the disregarded entity is not included in the foreign tax base.

### *.03 Certain Foreign Consolidated Groups*

A foreign consolidated group exists when a foreign country imposes tax on the combined income of two or more entities. Tax is considered imposed on the combined income of two or more entities even if the combined income is computed under foreign law by attributing to one such entity the income of one or more other entities.<sup>1</sup>

A foreign consolidated group is a pre-2011 splitter arrangement to the extent that the taxpayer did not allocate the foreign consolidated tax liability among the members of the foreign consolidated group based on each member's share of the consolidated taxable income included in the foreign tax base under the principles of §1.901-2(f)(3). A pre-2011 splitter arrangement involving a foreign consolidated group may exist even if one or more members has a deficit in earnings and profits for a particular year (for example, due to a timing difference). Pre-2011 taxes paid or accrued with respect to the income of a foreign consolidated group are pre-2011 split taxes to the extent that taxes paid or accrued by one member of the foreign consolidated group are imposed on a covered person's share of the consolidated taxable income included in the foreign tax base. The related income is the earnings and profits (computed for U.S. federal income tax purposes) of such other member attributable to the activities of that other member that gave rise to income included in the foreign tax base with respect to which the pre-2011 split taxes were paid or accrued.

No inference should be drawn from the treatment of foreign consolidated groups under section 909 as to the determination of the person who paid the foreign income tax for U.S. federal income tax purposes.

### *.04 Group Relief and Other Loss-Sharing Regimes*

A foreign group relief or other loss-sharing regime exists when one entity with a loss permits the loss to be used to offset the income of one or more other entities (a "shared loss"). A pre-2011 splitter arrangement involving a shared loss exists when the following three conditions are met:

(a) There is an instrument that is treated as indebtedness under the laws of the jurisdiction in which the issuer is subject to tax and that is disregarded for U.S. federal income tax purposes (a "disregarded debt instrument"). Examples of a disregarded debt instrument include a debt obligation between (1) two disregarded entities that

are owned by the same section 902 corporation, (2) two disregarded entities that are owned by a partnership with one or more partners that are section 902 corporations, (3) a section 902 corporation and a disregarded entity that is owned by that section 902 corporation, or (4) a partnership in which the section 902 corporation is a partner and a disregarded entity that is owned by such partnership.

(b) The owner of the disregarded debt instrument pays a foreign income tax attributable to a payment or accrual on the instrument.

(c) The payment or accrual on the disregarded debt instrument gives rise to a deduction for foreign tax purposes and the issuer of the instrument incurs a shared loss that is taken into account under foreign law by one or more entities that are covered persons with respect to the owner of the instrument.

In situations in which the three conditions described above are present, pre-2011 taxes paid or accrued by the owner of the disregarded debt instrument with respect to amounts paid or accrued on the instrument (up to the amount of the shared loss) are pre-2011 split taxes. The related income of a covered person is an amount equal to the shared loss, determined without regard to the actual amount of the covered person's earnings and profits.

### *.05 Hybrid Instruments*

A hybrid instrument for purposes of this notice is an instrument that either (1) is treated as equity for U.S. federal income tax purposes but is treated as indebtedness for foreign tax purposes ("U.S. Equity HI") or (2) is treated as indebtedness for U.S. federal income tax purposes but is treated as equity for foreign tax purposes ("U.S. Debt HI").

(a) U.S. Equity HI. If the issuer of a U.S. Equity HI is a covered person with respect to a section 902 corporation that is the owner of the U.S. Equity HI, there is a pre-2011 splitter arrangement with respect to the portion of the pre-2011 taxes paid or accrued by the owner section 902 corporation with respect to the amounts on the instrument that are deductible by

<sup>1</sup> A foreign tax is not considered to be imposed on combined income solely because foreign law: (1) permits one entity to surrender a net loss to another entity pursuant to a group relief or similar regime; (2) requires a shareholder of a corporation to include in income amounts attributable to taxes imposed on the corporation with respect to distributed earnings pursuant to an integrated tax system that allows the shareholder a credit for such taxes; or (3) requires a shareholder to include, pursuant to an anti-deferral regime, income attributable to the shareholder's interest in a corporation.

the issuer as interest under the laws of a foreign jurisdiction in which the issuer is subject to tax but that do not give rise to income for U.S. federal income tax purposes. Pre-2011 split taxes paid or accrued by the section 902 corporation equal the total amount of pre-2011 taxes paid by the section 902 corporation less the amount of pre-2011 taxes that would have been paid or accrued had the section 902 corporation not been subject to tax on income from the U.S. Equity HI. The related income of the issuer of the U.S. Equity HI is an amount equal to the amounts that are deductible by the issuer for foreign tax purposes, determined without regard to the actual amount of the issuer's earnings and profits.

(b) U.S. Debt HI. If the owner of a U.S. Debt HI is a covered person with respect to a section 902 corporation that is the issuer of the U.S. Debt HI, there is a pre-2011 splitter arrangement with respect to the portion of the pre-2011 taxes paid or accrued by the section 902 corporation on income in an amount equal to the interest (including original issue discount) paid or accrued on the instrument that is deductible for U.S. federal income tax purposes but that does not give rise to a deduction under the laws of a foreign jurisdiction in which the issuer is subject to tax. Pre-2011 split taxes are the pre-2011 taxes paid or accrued by the section 902 corporation on the income that would have been offset by the interest paid or accrued on the U.S. Debt HI had such interest been deductible for foreign tax purposes. The related income with respect to a U.S. Debt HI is the gross amount of the interest income recognized for U.S. federal income tax purposes by the owner of the U.S. Debt HI, determined without regard to the actual amount of the owner's earnings and profits.

#### .06 Rules for Applying Section 909 to pre-2011 Split Taxes and Related Income

##### (a) General Rules

(1) The determination of related income, other income, pre-2011 split taxes, and other taxes, and the portion of these amounts that were distributed, deemed paid or otherwise transferred or eliminated must be made on an annual basis beginning with the first taxable year of the section 902 corporation beginning after

December 31, 1996 ("post-1996 taxable year") in which the section 902 corporation paid or accrued a pre-2011 tax with respect to a pre-2011 splitter arrangement and ending with the section 902 corporation's last pre-2011 taxable year. Annual amounts of related income and pre-2011 split taxes are aggregated for each separate pre-2011 splitter arrangement.

(2) The determination of annual and aggregate amounts of related income and pre-2011 split taxes with respect to each pre-2011 splitter arrangement must be made for each separate category as defined in §1.904-4(m) of the section 902 corporation, each covered person, and any other person that succeeds to the related income and pre-2011 split taxes. In the case of a pre-2011 splitter arrangement involving a shared loss, the amount of the related income in each separate category of the covered person is equal to the amount of income in that separate category that was offset by the shared loss for foreign tax purposes. In the case of a pre-2011 splitter arrangement involving a U.S. Equity HI, the related income is assigned to the issuer's separate categories in the same proportions as the pre-2011 split taxes. Earnings and profits, including related income, are assigned to separate categories under the rules of §§1.904-4, -5, -7, and -7T. Foreign income taxes, including pre-2011 split taxes, are assigned to separate categories under the rules of §1.904-6. A section 902 shareholder must consistently apply methodologies for determining pre-2011 split taxes and related income with respect to all pre-2011 splitter arrangements.

##### (b) Rules Regarding Related Income

(1) In the case of each pre-2011 splitter arrangement involving a reverse hybrid or a foreign consolidated group, a covered person's aggregate amount of related income must be adjusted each year by the net amount of income and expense attributable to the activities of the covered person that give rise to income included in the foreign tax base, even if the net amount is negative and regardless of whether the section 902 corporation paid or accrued any pre-2011 split taxes in such year.

(2) Related income is determined without regard to the application of §1.960-1(i)(4) (relating to the effect of

separate limitation losses on earnings and profits in another separate category) or section 952(c)(1) (relating to certain earnings and profits deficits).

(3) If the earnings and profits of a covered person include amounts attributable to both related income and other income, including pre-1997 earnings, then distributions, deemed distributions, and inclusions out of earnings and profits (for example, under section 301, 304, 367(b), 951(a), 964(e), 1248, or 1293) of the covered person are considered made out of related income and other income on a *pro rata* basis. Any reduction of a covered person's earnings and profits that results from a payment on stock that is not treated as a dividend for U.S. federal income tax purposes (*e.g.*, pursuant to section 312(n)(7)) will also reduce related income and other income on a *pro rata* basis.

(4) In lieu of the rule in paragraph (3) of this section 4.06(b), a section 902 shareholder may choose to treat all distributions, deemed distributions, and inclusions out of earnings and profits of a covered person as attributable first to related income. A section 902 shareholder may choose to use this alternative method on a timely filed original income tax return for the first post-2010 taxable year in which the shareholder computes an amount of foreign taxes deemed paid with respect to a section 902 corporation that paid or accrued pre-2011 split taxes. Such choice by a section 902 shareholder is evidenced by employing the method on its income tax return; the section 902 shareholder need not file a separate statement. A section 902 shareholder that chooses this alternative method must consistently apply it with respect to all pre-2011 splitter arrangements.

(5) Distributions, deemed distributions, and inclusions of related income (including indirectly through a partnership) to persons other than the payor section 902 corporation retain their character as related income with respect to the associated pre-2011 split taxes.

(6) Related income carries over to other corporations in the same manner as earnings and profits carry over under section 381, §1.367(b)-7, or similar rules, and retains its character as related income with respect to the associated pre-2011 split taxes.

(7) Related income will be considered taken into account by a section 902 share-

holder to the extent that the related income is recognized as gross income by the section 902 shareholder, or by an affiliated corporation described in paragraph (9) of this section 4.06(b), upon a distribution, deemed distribution, or inclusion (such as under section 951(a)) out of the earnings and profits of the covered person attributable to such related income.

(8) Related income will be considered taken into account by a payor section 902 corporation if (a) the related income is reflected in the earnings and profits of such section 902 corporation for U.S. federal income tax purposes by reason of a distribution, deemed distribution, or inclusion out of the earnings and profits of the covered person attributable to such related income or (b) the payor section 902 corporation and the covered person are combined in a transaction described in section 381(a)(1) or (2).

(9) A section 902 shareholder will be considered to have taken related income into account if one or more members of an affiliated group of corporations (as defined in section 1504) that files a consolidated federal income tax return that includes the section 902 shareholder takes the related income into account.

(10) Distributions and deemed distributions described in this section 4.06(b) (including in the case of a section 902 shareholder that has chosen the alternative method described in paragraph (4) of this section 4.06(b)) do not include distributions of amounts described in section 959(c)(1) or (c)(2), which are distributed before amounts described in section 959(c)(3).

#### (c) Rules Regarding pre-2011 Split Taxes

(1) If the pre-2011 taxes of a section 902 corporation include both pre-2011 split taxes and other taxes, including pre-1997 taxes, then foreign taxes deemed paid under section 902 or 960 or otherwise removed from post-1986 foreign income taxes in pre-2011 taxable years will be treated as attributable to pre-2011 split taxes and other taxes on a pro rata basis.

(2) pre-2011 split taxes deemed paid in pre-2011 taxable years in connection with a dividend paid to a shareholder described in section 902(b) retain their character as pre-2011 split taxes. The section 902(b) shareholder will be treated as the

payor section 902 corporation with respect to those pre-2011 split taxes.

(3) pre-2011 split taxes that carry over to another foreign corporation, including under section 381, §1.367(b)-7 or similar rules, retain their character as pre-2011 split taxes. The transferee foreign corporation will be treated as the payor section 902 corporation with respect to those pre-2011 split taxes.

(4) For each pre-2011 splitter arrangement, as related income is taken into account by the payor section 902 corporation or a section 902 shareholder as provided in section 4.06(b), a ratable portion of the associated pre-2011 split taxes will no longer be treated as pre-2011 split taxes. In the case of a pre-2011 splitter arrangement involving a reverse hybrid or a foreign consolidated group, if aggregate related income is reduced to zero (other than as a result of a distribution, deemed distribution, or inclusion described in section 4.06(b)) or less than zero, pre-2011 split taxes will retain their character as pre-2011 split taxes until the amount of aggregate related income is positive and the related income is taken into account by the payor section 902 corporation or a section 902 shareholder as provided in section 4.06(b).

## SECTION 5. RULES RELATING TO PARTNERSHIPS AND TRUSTS

### .01 Taxes Paid or Accrued by Partnerships

Section 909(c)(1) provides that in the case of a partnership, section 909(a) and (b) will be applied at the partner level. Accordingly, in the case of foreign income taxes paid or accrued by a partnership, the taxes will be treated as pre-2011 split taxes to the extent such taxes are allocated to one or more section 902 corporations and would be pre-2011 split taxes if the partner section 902 corporation had paid or accrued the taxes directly on the date such taxes are included by the section 902 corporation under sections 702 and 706(a). Further, any foreign income taxes subject to section 909 will be suspended in the hands of the partner section 902 corporation.

### .02 Taxes Paid or Accrued by Partners

For purposes of applying section 909 in post-2010 taxable years, there will not be

a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by a partner with respect to its distributive share of the related income of a partnership that is a covered person with respect to the partner to the extent the related income is taken into account by the partner.

### .03 Section 704(b) Allocations

The Treasury Department and IRS recognize that certain allocations of creditable foreign tax expenditures and income of a partnership can result in the separation of the creditable foreign tax expenditures and the related income for purposes of section 909, notwithstanding that these allocations satisfy the requirements of section 704(b) and the regulations thereunder. See, e.g., §1.704-1(b)(4)(viii)(d) and §1.704-1(b)(5), *Example 24*. Partnership allocations that satisfy the requirements of section 704(b) and the regulations thereunder will not constitute pre-2011 splitter arrangements except to the extent the arrangement is otherwise described in section 4 of this notice (for example, a payment or accrual on a disregarded debt instrument that gives rise to a shared loss). However, the Treasury Department and IRS will provide in future guidance that allocations described in §1.704-1(b)(4)(viii)(d)(3) will result in a foreign tax credit splitting event in post-2010 taxable years to the extent such allocations result in foreign income taxes being allocated to a different partner than the related income. The Treasury Department and IRS solicit comments on the extent to which §1.704-1(b)(4)(viii)(d) and §1.704-1(b)(5), *Example 24* should be modified in light of the enactment of section 909.

### 04. Trusts

Rules similar to the rules of sections 5.01 and 5.02 of this notice will apply in the case of any trust with one or more beneficiaries that is a section 902 corporation.

## SECTION 6. INTERACTION BETWEEN SECTION 909 AND OTHER CODE PROVISIONS

### .01 Section 904(c)

Section 904(c) provides a 10-year carryforward period and a one-year carryback period for foreign income taxes in excess of a taxpayer's foreign tax credit limitation in any separate category. Section 904(c) implements the carryover of excess foreign income taxes by providing that the excess taxes are "deemed paid or accrued" in the carryover year. Questions have arisen concerning whether section 909 applies to excess foreign income taxes carried forward from pre-2011 taxable years and deemed paid or accrued under section 904(c) in post-2010 taxable years. The Treasury Department and IRS intend to issue regulations providing that section 909 does not apply to excess foreign income taxes that were paid or accrued in pre-2011 taxable years and carried forward and deemed paid or accrued under section 904(c) in a post-2010 taxable year.

### .02 Section 905(a)

Section 909 does not alter the general rules for determining when a creditable foreign tax is paid or accrued. Under §1.461-4(g)(6)(iii)(B), a creditable foreign tax accrues when all of the events have occurred that fix the fact and amount of foreign tax liability with reasonable accuracy, without regard to the economic performance (payment) requirement of section 461(h). See also *Dixie Pine Products Co. v. Commissioner*, 320 U.S. 516 (1944) (a contested foreign tax accrues in the year the contest is resolved). Under the "relation-back" doctrine, once a creditable foreign tax accrues, it "relates back" to the year with respect to which the tax was imposed. *Cuba Railroad Co. v. United States*, 124 F. Supp. 182 (SDNY 1954); Rev. Rul. 84-125, 1984-2 C.B. 125. However, section 909(c)(2) provides that notwithstanding the general rule, except for purposes of section 986(a) and as otherwise provided by the Secretary, suspended taxes are taken into account and treated as paid or accrued in the year the related income is taken into account. Thus, for purposes of determining in post-2010 taxable years the allowable deduction for foreign taxes paid or accrued under section

164(a), the carryover of excess foreign income taxes under section 904(c), and the extended period for claiming a credit or refund under section 6511(d)(3)(A), foreign income taxes to which section 909 applies are first taken into account and treated as paid or accrued in the year in which the related income is taken into account, and not in the earlier year to which the tax relates (determined without regard to section 909).

### .03 Section 905(c)

Under section 905(c) and the regulations under that section, a taxpayer that claims a foreign tax credit for taxes paid or accrued under section 901 or deemed paid under section 902 or 960 generally must notify the IRS when there has been a change to the amount of foreign taxes paid or accrued. Generally, in the case of a redetermination of foreign taxes claimed as a direct credit under section 901, the taxpayer's U.S. tax liability for the year to which the tax relates and other affected years must be redetermined. Section 905(c)(1). In the case of a redetermination of foreign taxes included in the computation of foreign taxes deemed paid under section 902 or 960, in lieu of recomputing the section 902 shareholder's U.S. tax liability, the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes generally must be adjusted at the time of the foreign tax redetermination to reflect the effect of the foreign tax redetermination in calculating foreign taxes deemed paid with respect to subsequent distributions and inclusions (and the amount of such distributions and inclusions). Section 905(c)(2)(B)(i)(I). Under section 905(c)(1)(B) and section 905(c)(2)(B), a foreign tax redetermination includes a failure to pay accrued tax within two years of the close of the taxable year to which such taxes relate and any subsequent payment of such accrued tax.

If a redetermination of foreign taxes claimed as a direct credit under section 901 occurs in a post-2010 taxable year and the foreign tax redetermination relates to a pre-2011 taxable year, to the extent such foreign tax redetermination increased the amount of foreign taxes paid or accrued with respect to the pre-2011 taxable year (e.g., due to an additional assessment of foreign tax or a payment of a previously

accrued tax not paid within two years), section 909 will not apply to such taxes.

If a redetermination of foreign tax paid or accrued by a section 902 corporation occurs in a post-2010 taxable year and increases the amount of foreign taxes paid or accrued by the section 902 corporation with respect to a pre-2011 taxable year (e.g., due to an additional assessment of foreign tax or a payment of a previously accrued tax not paid within two years), such taxes will be treated as pre-2011 taxes. Section 909 will apply to such taxes if they are pre-2011 split taxes. In that case, they will be suspended in the post-2010 taxable year in which they would otherwise be taken into account as a prospective adjustment to the section 902 corporation's pools of post-1986 foreign income taxes.

### .04 Other foreign tax credit provisions

Section 909 does not affect the applicability of other restrictions or limitations on the foreign tax credit under existing law, including the substantiation requirements of section 905(b).

## SECTION 7. EFFECTIVE DATE

The regulations described in this notice will apply in post-2010 taxable years, including for purposes of applying sections 902 and 960 to pre-2011 taxes. Until regulations incorporating the guidance set forth in this notice are issued, taxpayers may rely on the guidance contained in this notice.

## SECTION 8. REQUEST FOR COMMENTS AND CONTACT INFORMATION

The Treasury Department and IRS solicit comments on the rules described in this notice, including specifically the extent to which the 2006 proposed regulations should be finalized and §1.704-1(b)(4)(viii)(d) and §1.704-1(b)(5), *Example 24* should be modified. The Treasury Department and IRS expect future guidance will treat pre-2011 splitter arrangements as giving rise to foreign tax credit splitting events in post-2010 taxable years. The Treasury Department and IRS request comments on the appropriateness of such treatment and whether and to what extent other

transactions or arrangements should give rise to foreign tax credit splitting events in post-2010 taxable years. In particular, comments are requested on whether and to what extent the following transactions (or circumstances, as appropriate) should be treated as giving rise to foreign tax credit splitting events: (1) covered asset acquisitions described in section 901(m); (2) the incorporation of a disregarded entity or a hybrid partnership with respect to foreign income taxes paid in the year of the incorporation or attributable to a significant timing difference; (3) certain transfer pricing adjustments; (4) group relief structures not otherwise described in this notice; (5) sale and repurchase agreements in the related and unrelated counterparty contexts; (6) foreign anti-deferral regimes; and (7) foreign consolidated groups in which members have losses.

The Treasury Department and IRS also solicit comments concerning: (1) rules for associating foreign income taxes with related income; (2) ordering rules for dividends out of earnings and profits comprising both related income and other income; (3) the effect on related income of losses and deficits in earnings; and (4) additional rules for assigning foreign income taxes and related income to separate categories.

Written comments may be submitted to the Office of Associate Chief Counsel (International), Attention: Jeffrey L. Parry, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically to [Notice.comments@irs.counsel.treas.gov](mailto:Notice.comments@irs.counsel.treas.gov). Comments will be available for public

inspection and copying. For further information regarding this notice, contact Mr. Parry of the Office of Associate Chief Counsel (International) at (202) 622-3850 (not a toll-free call).

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

### Notice 2010-93

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 November 2010 is 5.43 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%
December	2010	6.14	5.52	6.14

#### 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) spec-

ifies 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 November 2010 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of Novem-

ber 2010 are, respectively, 1.65, 4.91, and 6.52. The three 24-month average corporate bond segment rates applicable for December 2010 under the election of § 430(h)(2)(G)(iv) are as follows:

First Segment	Second Segment	Third Segment
3.14	5.90	6.45

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

bond weighted average of 6.14 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2009	4.14	5.98	6.35

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 December 2010, the funding segment rates are the three 24-month average corporate bond segment rates applicable for December 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 November 2010 is 4.19 percent. The Service has determined this rate as the average of the yield on the 30-year Treasury bond maturing in August 2040 determined each day through November 9, 2010, and the yield on the 30-year Treasury bond maturing in November 2040 determined each day for the balance of the month.

Generally for plan years beginning after 2007, § 431 specifies the minimum 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%
December	2010	4.25	3.83	4.46

### 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 de-

termining the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for November 2010, taking into account the November 2010 30-year Treasury rate of 4.19 stated above, are as follows:

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<u>For Plan Years Beginning in</u>	<u>First Segment</u>	<u>Second Segment</u>	<u>Third Segment</u>
2010	2.67	4.62	5.59
2011	2.16	4.77	6.05

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**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*.



**Table I**  
 Monthly Yield Curve for November 2010  
 Derived from November 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	0.65	20.5	5.93	40.5	6.59	60.5	6.81	80.5	6.92
1.0	0.80	21.0	5.96	41.0	6.59	61.0	6.81	81.0	6.92
1.5	0.98	21.5	5.99	41.5	6.60	61.5	6.81	81.5	6.92
2.0	1.20	22.0	6.02	42.0	6.61	62.0	6.82	82.0	6.93
2.5	1.45	22.5	6.05	42.5	6.62	62.5	6.82	82.5	6.93
3.0	1.73	23.0	6.08	43.0	6.62	63.0	6.83	83.0	6.93
3.5	2.01	23.5	6.10	43.5	6.63	63.5	6.83	83.5	6.93
4.0	2.30	24.0	6.13	44.0	6.64	64.0	6.83	84.0	6.93
4.5	2.57	24.5	6.15	44.5	6.65	64.5	6.84	84.5	6.94
5.0	2.82	25.0	6.17	45.0	6.65	65.0	6.84	85.0	6.94
5.5	3.06	25.5	6.19	45.5	6.66	65.5	6.84	85.5	6.94
6.0	3.28	26.0	6.21	46.0	6.67	66.0	6.85	86.0	6.94
6.5	3.49	26.5	6.23	46.5	6.67	66.5	6.85	86.5	6.94
7.0	3.68	27.0	6.25	47.0	6.68	67.0	6.85	87.0	6.94
7.5	3.86	27.5	6.27	47.5	6.68	67.5	6.85	87.5	6.95
8.0	4.03	28.0	6.29	48.0	6.69	68.0	6.86	88.0	6.95
8.5	4.18	28.5	6.30	48.5	6.70	68.5	6.86	88.5	6.95
9.0	4.32	29.0	6.32	49.0	6.70	69.0	6.86	89.0	6.95
9.5	4.46	29.5	6.34	49.5	6.71	69.5	6.87	89.5	6.95
10.0	4.58	30.0	6.35	50.0	6.71	70.0	6.87	90.0	6.95
10.5	4.70	30.5	6.37	50.5	6.72	70.5	6.87	90.5	6.96
11.0	4.81	31.0	6.38	51.0	6.72	71.0	6.87	91.0	6.96
11.5	4.91	31.5	6.39	51.5	6.73	71.5	6.88	91.5	6.96
12.0	5.00	32.0	6.41	52.0	6.73	72.0	6.88	92.0	6.96
12.5	5.09	32.5	6.42	52.5	6.74	72.5	6.88	92.5	6.96
13.0	5.17	33.0	6.43	53.0	6.74	73.0	6.88	93.0	6.96
13.5	5.25	33.5	6.45	53.5	6.75	73.5	6.89	93.5	6.97
14.0	5.32	34.0	6.46	54.0	6.75	74.0	6.89	94.0	6.97
14.5	5.39	34.5	6.47	54.5	6.76	74.5	6.89	94.5	6.97
15.0	5.45	35.0	6.48	55.0	6.76	75.0	6.89	95.0	6.97
15.5	5.51	35.5	6.49	55.5	6.77	75.5	6.90	95.5	6.97
16.0	5.56	36.0	6.50	56.0	6.77	76.0	6.90	96.0	6.97
16.5	5.61	36.5	6.51	56.5	6.78	76.5	6.90	96.5	6.98
17.0	5.66	37.0	6.52	57.0	6.78	77.0	6.90	97.0	6.98
17.5	5.71	37.5	6.53	57.5	6.78	77.5	6.91	97.5	6.98
18.0	5.75	38.0	6.54	58.0	6.79	78.0	6.91	98.0	6.98
18.5	5.79	38.5	6.55	58.5	6.79	78.5	6.91	98.5	6.98
19.0	5.83	39.0	6.56	59.0	6.80	79.0	6.91	99.0	6.98
19.5	5.86	39.5	6.57	59.5	6.80	79.5	6.92	99.5	6.98
20.0	5.90	40.0	6.58	60.0	6.80	80.0	6.92	100.0	6.99

# Qualified Transportation Fringes

## Notice 2010-94

This notice delays the effective date of Revenue Ruling 2006-57. Revenue Ruling 2006-57 provides guidance to employers on the use of smartcards, debit or credit cards, or other electronic media to provide qualified transportation fringes under sections 132(a)(5) and (f) of the Code. This guidance is intended to provide relief to mass transit providers that have been unable to update their systems in order to comply with the Revenue Ruling guidelines prior to the current effective date of January 1, 2011. The effective date of Revenue Ruling 2006-57 is further delayed until January 1, 2012. Revenue Ruling 2006-57 is modified.

Revenue Ruling 2006-57, 2006-2 C.B. 911, provides guidance to employers on the use of smartcards, debit or credit cards, or other electronic media to provide qualified transportation fringes under Internal Revenue Code §§ 132(a)(5) and 132(f). The ruling's effective date was set for January 1, 2008. In 2007, however, Treasury and the IRS became aware that certain transit systems needed additional time to modify their technology and make it compatible with the requirements for vouchers set forth in Revenue Ruling 2006-57. Consequently, Treasury and the IRS delayed the effective date of Revenue Ruling 2006-57 until January 1, 2009. See Notice 2007-76, 2007-2 C.B. 735. In 2008, Treasury and the IRS further delayed the effective date of Revenue Ruling 2006-57 until January 1, 2010. See Notice 2008-74, 2008-38 I.R.B. 718. And, in 2009, Treasury and the IRS delayed the effective date of Revenue Ruling 2006-57 until January 1, 2011. See Notice 2009-95, 2009-52 I.R.B. 968. Certain transit systems need additional time to complete the process of adapting their technology to achieve compatibility with the requirements for vouchers. Therefore, the ruling's effective date is further delayed until January 1, 2012. Nevertheless, employers and employees may rely on Revenue Ruling 2006-57 with respect to transactions occurring prior to January 1, 2012.

The principal author of this notice is Syd Gernstein of the Office of

Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice, contact Syd Gernstein at (202) 622-6040 (not a toll-free call).

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## Rev. Proc. 2010-52

### SECTION 1. PURPOSE

This revenue procedure describes the procedure by which the plan sponsor of a multiemployer pension plan may request and obtain approval of an extension of an amortization period in accordance with § 431(d) of the Internal Revenue Code of 1986 (Code).

### SECTION 2. BACKGROUND INFORMATION

.01 *Section 431(d)*.—Section 431(d) was added to the Code as part of a significant revision of the funding rules for pension plans qualified under § 401(a) made by the Pension Protection Act of 2006 (PPA). Parallel provisions to § 431(d) can be found at § 304(d) of the Employee Retirement Income Security Act of 1974 (ERISA). The Secretary of the Treasury has interpretive and enforcement jurisdiction over both provisions.

Section 431(d)(1) provides that if the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the amortization period for any unfunded liability described in § 431(b)(2)(B) or 431(b)(4) (referred to in this revenue procedure as a “charge base”), and includes the certification by the plan's actuary described in § 431(d)(1)(B), the Secretary shall extend the amortization period for the period (not in excess of five years) requested in the application. An extension under § 431(d)(1) is referred to as an automatic extension. In addition, § 431(d)(2)(A) provides that the plan sponsor of a multiemployer plan may submit an application for an extension of the amortization period for any such charge base, and the Secretary may extend the amortization period for a period of time not in excess of 10 years less the number of years of any automatic extension with respect to such charge base, if the Secretary makes the determination

described in § 431(d)(2)(B). An extension under § 431(d)(2) is referred to as an alternative extension. Section 431(d)(3) requires that an applicant provide notice of the extension application to each affected party described in § 4001(a)(21) of ERISA.

.02 *Rev. Proc. 2008-67*.—Rev. Proc. 2008-67, 2008-2 C.B. 1211, provided the procedure for submitting an application for a ruling on an amortization extension with respect to plan years starting after December 31, 2007. This revenue procedure differs from Rev. Proc. 2008-67 in a number of ways. The major differences include: modifications to the list of affected parties to whom notification must be made (adding the Pension Benefit Guaranty Corporation (PBGC) and removing contributing employers); extension of the period for submission of an application; and modification of the treatment of automatic extension applications for purposes of certifying a plan's status under § 432(b)(3) of the Code. This revenue procedure also clarifies certain other aspects of Rev. Proc. 2008-67. In addition, the model notice in this revenue procedure now includes a plain language explanation section and a Comment and IRS Acknowledgement Sheet.

.03 *Section 431(b)(8)*.—Section 211(a)(2) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Pub. L. No. 111-192, added § 431(b)(8) to the Code. Section 431(b)(8)(A) provides a special amortization rule for certain net investment losses in the case of a multiemployer plan that meets a solvency test. The special rule applies to the portion of the plan's experience loss or gain for a plan year attributable to net investment losses (if any) incurred in either or both of the first two plan years ending after August 31, 2008 (an eligible loss year). This portion of the experience loss or gain may be treated as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over the period beginning with the plan year in which such portion is first recognized in the actuarial value of assets and ending with the last plan year in the 30-plan-year period beginning with the eligible loss year. Under § 431(b)(8)(A)(ii)(I), the amortization period under the special amortization rule

cannot be further extended under § 431(d). In addition, under § 431(b)(8)(A)(ii)(II), if an extension of an amortization period was granted under § 431(d) for any plan year before a decision to apply the special amortization rule for the plan year, that extension cannot result in the amortization period under the special amortization rule exceeding 30 years.

### SECTION 3. APPLICATIONS TO EXTEND AN AMORTIZATION PERIOD — IN GENERAL

.01 *Who may submit.*—An application for approval to extend the period of years required to amortize any unfunded liability must be submitted by the plan sponsor (*i.e.*, the board of trustees of the plan, and referred to in this revenue procedure as the applicant or Board) or by an authorized representative of the applicant. The application must be signed by an authorized trustee who is a current member of the Board or by an authorized representative of the applicant who either must be identified in (a), (b), or (c) of subsection 9.02(11) of Rev. Proc. 2010–4, 2010–1 I.R.B. 122, or must be an enrolled actuary within the meaning of § 7701(a)(35). Where an authorized representative signs the application or will appear before the Service in connection with the application, a Form 2848, *Power of Attorney and Declaration of Representative*, must be submitted with the application. An individual is not an authorized representative of the applicant merely on account of being an administrator or trustee of the plan.

.02 *Submission.*—An application must be submitted to:

Employee Plans  
Internal Revenue Service  
Commissioner, TE/GE  
Attention: SE:T:EP:RA  
P.O. Box 27063  
McPherson Station  
Washington, D.C. 20038

The user fee required by Rev. Proc. 2010–8, 2010–8 I.R.B. 234, must be sent with such an application.

.03 *Required Information.*—An application must contain the information required by § 4 and/or § 5 of this revenue procedure, as applicable. Applications must include the plan name, the plan spon-

sor's employer identification number, and the plan number. Applications must also include a statement that the notice required by § 3.05 of this revenue procedure has been provided, a description of the method of delivery used to satisfy the notice requirement, and a copy of the notice.

.04 *Necessary Procedural Documents.*—An application will not be considered unless it complies with (1) and (2) below.

(1) The application must contain a declaration in the following form: “Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and, to the best of my knowledge and belief, the request or the modification contains all the relevant facts relating to the request or the modification, and such facts are true, correct, and complete.” This declaration must be signed by an authorized trustee who is a current member of the Board. The signature of an individual with a power of attorney will not suffice for the declaration. See § 9.02(13) of Rev. Proc. 2010–4.

(2) Because the application constitutes a request for a ruling, compliance with § 6110 is also required. Section 601.201 of the Statement of Procedural Rules sets forth the requirements applicable to requests for rulings and determination letters which are subject to § 6110. Section 601.201(e) furnishes specific instructions to applicants.

The applicant must provide with the application either a statement of proposed deletions and the statutory basis for each proposed deletion, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted.

.05 *Notification.*—Within 14 days prior to the date of an application, the applicant must provide a copy of a written notice to each affected party (within the meaning of § 4001(a)(21) of ERISA) stating that an application for an extension of the amortization period under § 431(d) is being submitted to the Service. This includes each employee organization representing employees covered by the plan, each participant, beneficiary, and alternate payee (within the meaning of § 414(p)(8)) of the Code), and the PBGC. The original of the notice must bear a signature by an authorized trustee who is a current member of

the applicant's Board and must be in substantially the form set forth in the Model Notice found in Appendix A to this revenue procedure. The Service does not require the applicant to furnish any information to affected parties in addition to that required by the Model Notice in Appendix A as part of the extension application process, but additional information may be provided by the applicant pursuant to the collective bargaining process or otherwise.

The notice must be hand-delivered or mailed to the last known address of each employee organization, participant, beneficiary, and alternate payee. Alternatively, the notice may be delivered electronically in accordance with the requirements of § 1.401(a)–21 of the Income Tax Regulations. Merely posting the notice on a bulletin board is not sufficient to satisfy this notice requirement. If the applicant makes a reasonable effort to carry out the provisions of this paragraph, then failure of an employee organization, participant, beneficiary, or alternate payee to receive the notice will not cause the applicant to fail the notice requirement.

Notice to the PBGC may be submitted electronically to *MultiemployerProgram@pbgc.gov* or may be sent to the following address:

Pension Benefit Guaranty Corporation  
Attn: Multiemployer Program Division  
1200 K Street, N.W.  
Washington, D.C. 20005–4026

.06 *Providing Information.*—Employers who have difficulty in furnishing the information specified in this revenue procedure may call the Employee Plans Customer Assistance Service at 1–877–829–5500 (a toll-free number), or write for guidance to the following address:

Internal Revenue Service  
Commissioner, TE/GE  
Attention: SE:T:EP:RA:T:A2  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

In appropriate instances, pre-submission conferences may be afforded in addition to conferences available under Rev. Proc. 2010–8.

.07 *Coordination of Extension Applications.*—The total length of an amortization period extension permitted under

paragraphs (1) and (2) of § 431(d) of the Code for a charge base is limited to 10 years. Section 4 of this revenue procedure relates to automatic extensions under § 431(d)(1). Section 5 of this revenue procedure relates to alternative extensions under § 431(d)(2). An automatic extension for a charge base may not exceed five years. An alternative extension for a charge base may be for up to 10 years less any automatic extension approved for that charge base. An applicant requesting both types of extension may do so in a single application. However, such an application must include the information specified in § 4.01 below (including the actuarial certification described in § 4.01(4)), the information specified in § 5.01 below, and a completed copy of the checklist that appears as Appendix B of this revenue procedure. Such a combined application will be considered a single ruling request. If the applicant requests both types of extension in a single application, the Service may approve the automatic extension without approving the alternative extension.

*.08 Modification of Existing Extension.*—If a plan has already received under § 431(d), or under § 412(e) as in effect before the effective date of PPA, an extension for less than 10 years of the amortization period on any charge base, an application for an alternative extension may be submitted modifying the extension on such charge base to a total of 10 years (taken together with the original extension). Even if the original extension was for less than five years, no such modification of an extension may be requested as an automatic extension.

*.09 Interim Effect of Application.*—Whether the Service has ruled on an application does not affect the 90-day deadline for certification of a multiemployer plan's status under § 432(b)(3) of the Code. In making this certification, if the plan has submitted an application for an automatic extension under § 431(d)(1) and the Service has not yet ruled on the application, the actuary must treat the application as approved. However, for certifications made before January 1, 2011, the actuary may, but is not required to, treat as approved an application for an automatic extension on which the Service has not yet ruled. The provisions in the preceding two sentences do not apply if the application was submitted after the deadline specified

in Section 6, or if the actuary has reason to believe that the standards of this revenue procedure have not been met for the application submitted.

#### SECTION 4. APPLICATION FOR AUTOMATIC EXTENSION

*.01 Information to be provided.*—An applicant for an automatic extension must furnish the following information:

(1) A list of the charge bases for which an extension of the amortization periods is requested.

(2) The length of the extension of the amortization period being requested for each of the charge bases listed in (1) above (up to a maximum of five years). No extension will be granted with respect to an amortization period for net investment losses described under § 431(b)(8)(A)(i).

(3) Whether a prior application for an automatic or alternative amortization extension under § 431(d), or amortization extension under § 412(e) as in effect before the effective date of PPA, was or was not approved with respect to any of the charge bases for which an extension is requested, including, if approved, the length of the extension, and, if denied, the reason for the denial and an explanation of why the reason for the denial no longer applies.

(4) A certification by the plan's actuary that, based on reasonable assumptions:

1. Absent the extension for which the plan is applying, the plan would have an accumulated funding deficiency in the current plan year or any of the nine succeeding plan years,

2. The plan sponsor has adopted a plan to improve the plan's funding status,

3. The plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

4. The notice required under § 431(d)(3)(A) has been provided, in accordance with § 3.05 of this revenue procedure.

*.02 Ruling.*—Upon receipt of the application with the necessary information, and verification that the criteria stated above have been met, the Secretary shall issue a statement to the applicant providing approval for the requested extension.

*.03 Applicable Period.*—The procedures of this § 4 shall not apply with respect to any application submitted after

December 31, 2014, in accordance with § 431(d)(1)(C).

#### SECTION 5. APPLICATION FOR ALTERNATIVE EXTENSION

*.01 Information to be provided.*—An applicant for an alternative extension must furnish appropriate evidence that the extension of the amortization period would carry out the purposes of ERISA and PPA and would provide adequate protection for participants and their beneficiaries, and that the failure to permit the extension would (I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and (II) be adverse to the interests of plan participants in the aggregate. What constitutes appropriate evidence will depend on the facts and circumstances of each case. A response must be furnished for each of paragraphs (1) through (5) below. In certain cases, some of the material described in paragraphs (1) through (5) may be inapplicable, unavailable, inappropriate, or burdensome to furnish. In such cases, the applicant must furnish a statement indicating why the material for a particular paragraph is inapplicable, unavailable, inappropriate, or burdensome.

(1) *General facts concerning the participating employers.*

A brief statement should be submitted concerning: (a) the history of the contributing employers and the industry or industries covered by the plan; (b) the ownership of the principal employers (as identified below) and any recent or contemplated changes (such as acquisitions, mergers, or discontinuances of operations) which might have a bearing on the employers' organizations or general financial condition; (c) any recently withdrawn principal employers with the applicable withdrawal liability amounts and dates; and (d) a general description of the financial state of the industry in which employees covered by the plan are employed.

(2) *The financial condition of the principal employers.*

For purposes of this revenue procedure, the principal employers are those employers who (1) are directly represented on the applicant board of trustees, (2) made five percent or more of the total contributions

to the plan during the preceding plan year, or (3) for the current plan year, are required to make five percent or more of the total required contributions under the collective bargaining agreements relating to the plan for which the extension is requested. Each of the principal employers must submit the latest available annual financial report of the employer and each of the other entities included within the controlled group of which the employer is a member. This submission must include at least the balance sheet, profit and loss statement, cash flow statement, and notes to the financial statement. Recent interim financial reports for each of the controlled group members, if available, must also be submitted along with an interim financial report covering the corresponding period for the previous year. If the employer submits financial reports to the Securities and Exchange Commission, these reports must be submitted for the same period as the annual financial report. Preferably, the financial report should include certified financial statements. If certified financial statements have not been prepared, an uncertified report is acceptable. If neither certified nor uncertified reports are available, a copy of the company's latest available federal income tax return, including all of the supporting schedules, must be submitted. The required financial information of the principal employers should be submitted directly from each employer to the Service at the following address, at the same time that the application is made:

Employee Plans  
Internal Revenue Service  
Commissioner, TE/GE  
Attention: SE:T:EP:RA  
P.O. Box 27063  
McPherson Station  
Washington, D.C. 20038

*(3) Information concerning the extension of the amortization period.*

Information concerning the extension of the amortization period must include the following.

1. A list of the charge bases for which the extension is requested, the amount of each such base, and the number of years remaining in the amortization period for the charge base. A favorable ruling will not be granted on an application with respect

to which the total amount subject to the requested extension is not yet established.

2. The reasons why an extension of the amortization period is needed.

3. The length of the extension of the amortization period desired (up to a maximum of 10 years less any automatic or previously approved alternative extension). No extension will be granted with respect to an amortization period for net investment losses described under § 431(b)(8)(A)(i).

4. Whether a prior application for an automatic or alternative amortization extension under § 431(d), or amortization extension under § 412(e) as in effect before the effective date of PPA, was or was not approved with respect to any of the charge bases for which an extension is requested, including, if approved, the length of the extension, and, if denied, the reason for the denial and an explanation of why the reason for the denial no longer applies.

5. Information concerning the actions taken by the applicant, before the application for an extension has been made, to reduce the plan's unfunded liability. Such actions would include the reduction of future plan benefit accruals and increases in employer contribution rates. Also describe any benefit reductions, contribution rate increases, or other actions that are intended to be taken in the future.

6. Projections of (i) funding standard account credit balance/accumulated funding deficiencies, (ii) actuarial value of assets and market value of assets, (iii) current liabilities, and (iv) funding ratios (determined in accordance with § 432(i)) for the length of the extension of the amortization period requested and for the period 10 years afterwards. For example, if the applicant requests an extension of 10 years (including a five-year automatic extension), the projections must be for a 20-year period. These projections must be prepared by an enrolled actuary.

7. The first plan year for which the extension would apply, *i.e.*, the first plan year for which the extension of the amortization period will be reflected in the determination of the minimum funding standard for the plan (*e.g.*, 1/1/2011–12/31/2011).

The Service may request additional information as needed.

*(4) Facts concerning the pension plan.*

For each pension plan for which an extension is requested, the following information must be supplied.

1. The date the plan was adopted.

2. The effective date of the plan.

3. The classes of employees covered.

4. The number of active participants and the number of total participants.

5. A copy of the current plan document and the most recent summary plan description.

6. A copy of the most recent determination letter issued to the plan.

7. A brief description of all plan amendments adopted during the first plan year for which the extension would apply and the previous four years which affect plan costs, including the approximate effect of each amendment on such costs.

8. The most recent actuarial report plus any available actuarial reports for the preceding two plan years. Also, if not shown in the most recent actuarial report, the present value of accrued benefits, present value of vested benefits, and fair market value of assets (excluding contributions not yet paid).

9. A description of how the plan is funded (*i.e.*, trust fund, individual insurance policies, etc.).

10. A list of the contributions actually paid to the plan in each month, from the twenty-fourth month prior to the beginning of the first plan year for which the extension would apply through the date of the application (including the plan year to which each of the contributions was applied), with the employee contributions and the employer contributions listed separately.

11. The approximate contribution required to meet the minimum funding standard for the first plan year for which the extension would apply. This amount must be determined by the plan's enrolled actuary.

12. A copy of the most recently completed *Annual Return/Report of Employee Benefit Plan* (Form 5500 series, as applicable) and a copy of the corresponding Actuarial Information schedule (Schedule MB).

13. A copy of each ruling letter for the plan that waived the plan's minimum funding standard during the last 15 plan years, a statement of the amount waived for each plan year, and a statement of the outstanding balance of the amortization base for each waived funding deficiency. The out-

standing balance of the amortization base for each waiver is to be calculated as of the first day of the first plan year for which an extension would apply.

14. A copy of each ruling letter for the plan that granted under § 431(d), or under § 412(e) of the Code as in effect before the effective date of the PPA, an extension of time to amortize any unfunded liability which became applicable at any time.

15. A copy of the certification of whether or not the plan is in critical status or endangered status, in accordance with the requirements of § 432(b)(3), for the first plan year for which the extension would apply.

16. A copy of any funding improvement plan or rehabilitation plan to which the plan is currently subject in accordance with § 432, or to which the plan has been subject at any time within the 10 years preceding the date of the application and all updates to the funding improvement plan or rehabilitation plan.

(5) *Other information.*

1. Describe the nature of any matters pertaining to the plan which are currently pending with, or are intended to be submitted to, the Service, the Department of Labor, or the PBGC.

2. Furnish details of any existing arbitration, litigation, or court procedure which involves the plan.

.02 *Checklist.*—A checklist has been provided in Appendix B for the use of an applicant submitting an application for an alternative extension. The checklist must be signed and dated by the applicant or authorized representative and placed on top of the application.

## SECTION 6. DEADLINE FOR REQUESTING AN EXTENSION

All extension applications must be submitted by the 15<sup>th</sup> day of the third calendar month following the last day of the first plan year for which the extension is intended to take effect. The Service will consider applications for extensions submitted after this date only upon a showing of good cause. In seeking an alternative extension of an amortization period with respect to a plan year which has not yet ended, the applicant may have difficulty in furnish-

ing sufficient current information in support of the application. For this reason, it is generally advised that an application not be submitted earlier than 90 days prior to the end of the plan year for which the extension is requested. This 90-day period does not apply to applications for an automatic extension. Section 431(d)(2)(C) of the Code requires that the Service act on an application for an alternative extension within 180 days of receiving the application. An application will not be considered received until the applicable information required by §§ 4.01, 5.01, and 5.02 of this revenue procedure has been received. The Service will provide notification to the applicant of the date upon which it has full receipt of all required information. The Service will close, without issuing a ruling, the file on a submission for which not all of the required documentation is provided in a timely manner.

## SECTION 7. BANKRUPTCY PETITIONS

If a significant number of contributing employers or any of the principal employers file a bankruptcy petition after the application for an extension of an amortization period is submitted to the Service, the applicant must provide to the Service an update to the information required to be submitted in § 5 of this revenue procedure, especially the financial information in §§ 5.01(2) and 5.01(3).

## SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for all ruling requests submitted on or after January 1, 2011. Ruling requests submitted before January 1, 2011, may use this revenue procedure or Rev. Proc. 2008-67.

## SECTION 9. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2010-4, 2010-1 I.R.B. 122, is modified to the extent that this revenue procedure provides special procedures for issuing rulings with respect to applications for an extension of an amortization period.

Rev. Proc. 2008-67 is superseded effective for applications submitted on or after January 1, 2011.

## SECTION 10. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1890.

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 revenue procedure is in §§ 3, 4 and 5, and Appendix B. This collection of information is required to evaluate, process, and obtain approval of the application for an extension of an amortization period. This information will be used to make determinations on extensions of the amortization period under § 431(d). The likely respondents are businesses or other for-profit institutions and nonprofit institutions.

The estimated total annual reporting/recordkeeping burden is 2,500 hours.

The estimated annual burden per respondent/recordkeeper varies from 71 to 129 hours, depending on individual circumstances, with an estimated average burden of 100 hours. The estimated number of respondents/recordkeepers is 25.

The estimated annual frequency of responses is one.

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 tax return information are confidential, as required by 26 U.S.C. § 6103.

## DRAFTING INFORMATION

The principal author of this revenue procedure is Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. Questions about this revenue procedure and its application may be directed by email to [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov).

## APPENDIX A: Model Notice

### Notice of Application For Amortization Extension Plan: [INSERT PLAN NAME]

#### Part I. Plain Language Explanation

This notice is to inform you that the [Insert plan name] is requesting a ruling from the IRS to extend certain amortization period(s).

*Why is the pension plan sending you this notice?* Pension plans are required by law to send out notices to affected parties when certain events happen, such as when the plan requests a ruling from the IRS for certain purposes.

*What the notice does:* The notice alerts you to a ruling the pension plan is requesting from the IRS. **You are not required to take any action at all.** The reason for the notice is to tell you about an action being taken by the pension plan, and to inform you that you have a right to comment on the ruling the plan is requesting from the IRS. If you wish, you may comment to the IRS on the ruling request, in accordance with the terms stated in Technical Provisions, Part II below. Or, if you wish, you may take no action at all. Also, Information about Funded Status of Plan, Part III, explains how you may obtain more information regarding the plan from the plan administrator, or from the Department of Labor.

*What kind of ruling is the plan requesting?* The plan's participating employers are required to pay sufficient contributions to the retirement fund, over a specified period of years, to bring the level of funding equal to the plan's long term obligations. The ruling request is to extend the period of years required to fund the obligations.

*What the notice does not do:* This notice does not obligate you to do anything. It gives you an opportunity to comment if you wish. This notice does not enable the IRS to explain your benefits, or to adjust them in any way. The IRS does not maintain data about your benefits under the plan. If you wish to obtain information about your benefits, you should ask the plan administrator. The notice does not allow the IRS to give you information about a requested ruling. Disclosure laws prohibit the IRS from giving out such information. However, see Information about Funded Status of Plan, Part III below, for an explanation of your right under § 101(k) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), to request information from the plan administrator that is relevant to the amortization extension application.

*What the requested ruling would not do:* The ruling the pension plan is requesting would not change your accrued benefit. If the IRS were eventually to decide in favor of the requested ruling, the ruling would neither reduce your accrued benefit nor eliminate the obligation of the contributing employers to continue to fund benefits. If the ruling request is approved by the IRS, your pension plan remains obligated to pay your benefits as determined under the plan documents.

#### Part II. Technical Provisions

This notice is to inform you that an application for an extension of an amortization period for unfunded liability under § 431(d) of the Internal Revenue Code (Code) and § 304(d) of ERISA will be submitted by [INSERT APPLICANT'S NAME] to the Internal Revenue Service (IRS) for the [INSERT PLAN NAME] for the plan year beginning [INSERT DATE].

The IRS will grant an automatic extension if the plan's actuary certifies that the plan's funded status meets certain standards described in § 431(d)(1) of the Code. The IRS may also grant an alternative extension if it determines (A) that the extension would carry out the purposes of ERISA and the Pension Protection Act of 2006 and would provide adequate protection for participants, and (B) that failure to permit the extension would result in substantial risk to the continuation of the plan, and would be adverse to the interests of the plan participants in the aggregate. The plan is applying for (check one or both, as appropriate):

\_\_\_\_\_ an automatic extension, and/or

\_\_\_\_\_ an alternative extension.

The IRS has received a copy of this notice. The IRS will consider any relevant information that it receives concerning the application for an extension. Any additional information that you may have should be submitted using the attached Comment and IRS Acknowledgment Sheet. You may send this information to the following address:

Director, Employee Plans  
Internal Revenue Service  
Attn: SE:T:EP:RA:T:A2  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

If you intend to submit comments, any such information should be submitted as soon as possible after you receive this notice. Due to the disclosure restrictions of § 6103 of the Code, the IRS cannot provide any information with respect to the extension application itself. In particular, the IRS cannot disclose that it has received such a ruling request. As a result, the only response the IRS can make to any information you send is an acknowledgement that it has received your comments. Therefore, the IRS will respond to your letter only if you include a completed acknowledgement sheet as given below in Part IV of this notice.

**Part III. Information about Funded Status of Plan**

As required by § 104(b)(2) and (4) of ERISA, the plan administrator must furnish a copy of the latest annual plan report upon written request and make the annual report available for inspection at its principal office, which is located at [INSERT ADDRESS]. Under § 101(k)(1) of ERISA, any application for an extension of the amortization period under § 304(d) of ERISA or § 431(d) of the Code (including the application for extension described in this notice) and the determination made by the IRS with respect to such application may be obtained upon request by writing to the plan administrator at the above address. Such documents must be furnished by the plan administrator no later than 30 days after receipt of the written request. Section 502(c)(4) of ERISA grants the Department of Labor the authority to assess civil penalties not to exceed \$1,000 per day for each violation of § 101(k).

*[Instruction: If the plan administrator makes a reasonable charge to cover copying, mailing, and other costs of furnishing copies permitted under § 101(k) of ERISA, the amount of such charge should be stated in the notice.]*

In accordance with § 104 of ERISA, annual financial reports for this plan, which include employer contributions made to the plan for any plan year, are available for inspection at the Department of Labor in Washington, D.C. Copies of such reports may be obtained upon request and upon payment of copying costs from the following address:

Public Disclosure Room  
Room N-1513  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

For 2009 and subsequent plan years, you may obtain an electronic copy of the plan’s annual report at [www.efast.dol.gov](http://www.efast.dol.gov) and accessing the Form 5500 search function.

The following information is provided pursuant to § 304(d)(3) of ERISA and § 431(d)(3) of the Code:

Present value of accrued benefits \$\_\_\_\_\_

Present value of benefits that are guaranteed by the PBGC, calculated as though the plan terminated  
\$\_\_\_\_\_

Fair market value of plan assets \$\_\_\_\_\_

The above calculations were as of [INSERT DATE]. The above present values were calculated using an interest rate or rates of [INSERT INTEREST RATE(S)].

[SIGNATURE OF AUTHORIZED TRUSTEE OF THE APPLICANT BOARD]  
[INSERT NAME]  
[INSERT TITLE]



**Part IV. Response to Comments**

**Comment and IRS Acknowledgement Sheet**

For Comments on Application for Amortization Extension

If you send any comments about the application for an amortization extension, including whether the plan meets the criteria stated in Part II above, you should provide your name and address below and include this acknowledgement sheet with your comments. The IRS will complete the acknowledgment below, and return it to you. Since the IRS cannot disclose to you any information about any other taxpayer, the IRS cannot tell you anything about any plan's request for a ruling. Therefore, this acknowledgement sheet will constitute the only response the IRS will make to your comments.

*1. To be completed by the person submitting comments to the IRS:*

Submitter's Name and Address:

Plan with respect to which you are making comments:

[INSERT PLAN NAME]

*2. To be completed by IRS:*

Date your comments were received:

Signature:

Director, Employee Plans

**APPENDIX B. APPLICATION FOR ALTERNATIVE EXTENSION OF AN AMORTIZATION PERIOD CHECKLIST  
IS YOUR SUBMISSION COMPLETE?**

Instructions

The Service will be able to respond more quickly to your application for an alternative extension of an amortization period if it is carefully prepared and complete. To ensure your application is in order, use this checklist. Answer each question in the checklist by inserting Y for yes, N for no, or N/A for not applicable, as appropriate, in the blank next to the item. Sign and date the checklist (as applicant or authorized representative) and place it on top of your application.

You must submit a completed copy of this checklist with your application. If a completed checklist is not submitted with your application, substantive consideration of your submission will be deferred until a completed checklist is received.

- \_\_\_\_\_ 1. If you want to designate an authorized representative, have you included a properly executed Form 2848 (*Power of Attorney and Declaration of Representative*)?
- \_\_\_\_\_ 2. Have you satisfied all the requirements of Rev. Proc. 2010-4 (especially concerning signatures and penalties of perjury statement)? (See § 3.04(1))
- \_\_\_\_\_ 3. Have you included a statement of proposed deletions? (See § 3.04(2))
- \_\_\_\_\_ 4. Have you included the user fee required under Rev. Proc. 2010-8? (See § 3.02)
- \_\_\_\_\_ 5. Have you included a copy of the written notice that an application for an extension of an amortization period is being submitted, a statement that such notice was delivered to each affected party, and a description of the method used to satisfy the notice requirement? (See § 3.03 and Appendix A)
- \_\_\_\_\_ 6. Have you included the general facts concerning the participating employers? (See § 5.01(1))
- \_\_\_\_\_ 7. Have you included a description of the industry's financial state? (See § 5.01(1))
- \_\_\_\_\_ 8. Have you included information concerning the extension of the amortization period, including coordination with any extension under § 431(b)(8)(A)(i) of the Code ? (See § 5.01(3))
- \_\_\_\_\_ 9. Have you included information concerning the pension plan? (See § 5.01(4))
- \_\_\_\_\_ 10. Have you included information concerning other matters pertaining to the plan? (See § 5.01(5))

\_\_\_\_\_  
Signature  
Typed or printed name of person signing checklist  
Title or Authority

\_\_\_\_\_  
Date

## Part IV. Items of General Interest

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

#### Announcement 2010–94

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

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on December 27, 2010, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Armenian Relief Society of Texas  
Richmond, TX  
Mexican American Research Center, Inc.  
Austin, TX

Panhandle Land Conservancy, Inc.  
Destin, FL

### Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts; Correction

#### Announcement 2010–95

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (T.D. 9340, 2007–2 C.B. 487 ) that were published in the **Federal Register** on Thursday, July 26, 2007 (72 FR 41128) providing updated guidance on section 403(b) contracts of public schools and tax-exempt organizations described in section 501(c)(3). These regulations will affect sponsors of section 403(b) contracts, administrators, participants, and beneficiaries.

DATES: The correction is effective October 26, 2010, and is applicable on July 26, 2007.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, John Tolleris at (202) 622–6060; concerning the regulations as applied to church-related entities, Sherri Edelman or Jason Levine at (202) 283–9634 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

#### Background

The final regulations that are the subject of this correction are under section 403(b) of the Internal Revenue Code.

#### Need for Correction

As published, final regulations (T.D. 9340) contain an error that may prove to be misleading and is in need of clarification.

#### Correction of Publication

Accordingly, the publication of the final regulations (T.D. 9340), which was the subject of FR Doc. 07–3649, is corrected as follows:

On page 41138, column 2, in the preamble, under footnote number 11, line 26, the language “Rev. Rul. 66–254, 1966–2 C.B. 125” is removed.

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

(Filed by the Office of the Federal Register on October 25, 2010, 8:45 a.m., and published in the issue of the Federal Register for October 26, 2010, 75 FR. 65567)

### Form 1040, Form 1040A, Form 1040EZ, and Form 1041 Electronic Filing Hardship Waiver Request Procedures for Calendar Year 2011

#### Announcement 2010–96

This announcement applies to tax return preparers who are required by law to electronically file certain returns. On December 3, 2010, proposed regulations were published in the Federal Register (75 FR 75439), which would implement the statutory requirement under section 6011(e)(3) of the Internal Revenue Code for specified tax return preparers to file income tax returns using magnetic media (electronically) for individuals, estates, and trusts if the specified tax return preparers prepare and file the returns. Notice 2010–85, a notice of a proposed revenue procedure published in the Internal Revenue Bulletin (I.R.B. 2010–51) on December 20, 2010, provides, for calendar year 2011, that tax return preparers who meet the definition of a “specified tax return preparer” and who believe they may qualify for an undue hardship waiver may voluntarily submit waiver requests to the IRS prior to publication of a final revenue procedure. Form 8944, *Preparer e-file Hardship Waiver Request*, is now available

on-line and must be used to voluntarily request waivers for calendar year 2011. You can get Form 8944 on-line at [www.irs.gov](http://www.irs.gov). Form 8944 may also be ordered by calling 1-800-TAX-FORM (1-800-829-3676), the toll-free IRS number for ordering forms. Forms ordered through the toll-free number will be mailed to you.

Specified tax return preparers may submit completed Forms 8944 on or after the date of the publication of this announcement. Specified tax return preparers are encouraged to submit undue hardship waiver requests using Form 8944 as soon as possible to allow sufficient time for the IRS to review the requests and provide notification of approval or denial of the requests. For calendar year 2011, Forms 8944 must be submitted to the IRS address

or facsimile number (but not both) listed below, no later than April 1, 2011. Forms 8944 submitted after that date will only be reviewed under limited circumstances, as further explained in the instructions to Form 8944. A specified tax return preparer may mail his or her completed Form 8944 and any required attachments to:

Internal Revenue Service  
Attn: EFU Waiver  
P.O. Box 4099  
Stop 983  
Woburn, MA 01888-4099

Alternatively, a specified tax return preparer may send his or her completed Form 8944 and any required attachments to the IRS via facsimile to 1-877-477-0567 (a

toll-free number). Allow four to six weeks to receive notification of approval or denial of the waiver request. However, the approval or denial of waiver requests is contingent upon and will not occur prior to the publication of final regulations and a final revenue procedure.

For questions about completing Form 8944, or to check on the status of a hardship waiver request that has been submitted and remains outstanding for at least four weeks, call the IRS at 1-866-255-0654 (a toll-free number). The principal author of this announcement is Keith Brau of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this announcement, contact Keith Brau at (202) 622-4940 (not a toll-free number).

# 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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Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
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SPR	Statement of Procedural Rules
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