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bulletin

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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. Proc. 2011–16, page 440.

This procedure provides a safe harbor to real estate investment trusts (REITs) with respect to how interest on certain loans secured by real estate that have been modified in response to default or reasonably foreseeable default will be treated for purposes of the income tests under sections 856(c)(2) and (3) of the Code. This procedure also provides a safe harbor regarding the treatment of certain mortgage loans for purposes of the 75 percent asset test under section 856(c)(4)(A).

Rev. Proc. 2011–17, page 441.

This procedure allows a retailer that issues gift cards in exchange for returned goods to treat the transactions as (1) the payment of a cash refund in the amount of the gift card, and (2) the sale of a gift card in the amount of the gift card. Rev. Proc. 2008–52 modified.

Rev. Proc. 2011–18, page 443.

This procedure allows taxpayers to defer recognizing in gross income advance payments received from the sale of gift cards that are redeemable for goods or services of the taxpayer or a third party. Rev. Proc. 2004–34 modified and clarified.

EMPLOYEE PLANS

Notice 2011–7, page 437.

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 January 2011; the 24-month average segment rates; the funding transitional segment rates applicable for January 2011; and the minimum present value transitional rates for December 2010.

Announcement 2011–8, page 446.

This announcement contains a correction to Revenue Procedure 2011–8, 2011–1 I.R.B. 237, which contains an error in the user fee schedule that applies to a non-mass submitter of a master or prototype (M&P) plan. Rev. Proc. 2011–8 corrected.

ADMINISTRATIVE

Announcement 2011–7, page 446.

This announcement contains corrections to Revenue Procedure 2011–1, 2011–1 I.R.B. 1, which contained two outdated references to user fee amounts. Rev. Proc. 2011–1 corrected.

Finding Lists begin on page ii.
Index for January begins on page iv.

Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

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

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

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

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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

Section 451.—General Rule for Taxable Year of Inclusion

Guidance is provided allowing taxpayers to defer recognizing in gross income advance payments received from the sale of gift cards that are redeemable for goods or services of the taxpayer or a third party. See Rev. Proc. 2011-18, page 443.

Section 1001.—Determination of Amount of and Recognition of Gain or Loss

26 CFR 1.1001–3: Modifications of debt instruments.

This revenue procedure provides a safe harbor to real estate investment trusts (REITs) with respect to how interest on certain loans secured by real estate that have been modified in response to default or reasonably foreseeable default will be treated for purposes of the income tests under sections 856(c)(2) and (3) of the Internal Revenue Code. The revenue procedure also provides a safe harbor regarding the treatment of certain mortgage loans for purposes of the 75 percent asset test under section 856(c)(4)(A). See Rev. Proc. 2011-16, page 440.

Part III. Administrative, Procedural, and Miscellaneous

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

Notice 2011–7

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), and the 24-month average 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 December 2010 is 5.60 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	Permissible Range	
Month	*Year*	Average	90% to	100%
January	2011	6.12	5.51	6.12

YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. Section 430(h)(2)G) set forth a transitional rule applicable to plan years beginning in 2008 and 2009 under which the segment rates were blended with the corporate bond weighted average described above, including an election under § 430(h)(2)(G)(iv) for an employer to use the segment rates without the transitional rule.

Notice 2007–81, 2007–2 C.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond 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 December 2010 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of December 2010 are, respectively, 1.98, 5.23, and 6.52. The three 24-month average corporate bond segment rates applicable for January 2011 are as follows:

First Segment	Second Segment	Third Segment
2.94	5.82	6.46

The transitional rule of § 430(h)(2)(G) does not apply to plan years beginning after December 31, 2009. Therefore, for a plan year beginning after 2009 with a lookback month to January 2011, the funding segment rates are the three 24-month average corporate bond segment rates applicable for January 2011, listed above without blending for any 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 December 2010 is 4.42 percent. The Service has determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in November 2040.

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	Permissible Range	
Month	*Year*	Average	90%	to 105%
January	2011	4.26	3.83	4.47

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 determining the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for December 2010, taking into account the December 2010 30-year Treasury rate of 4.42 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2010	2.96	4.91	5.68
2011	2.47	5.07	6.10

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 December 2010
Derived from December 2010 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	0.59	20.5	6.05	40.5	6.58	60.5	6.76	80.5	6.85
1.0	0.85	21.0	6.08	41.0	6.59	61.0	6.76	81.0	6.85
1.5	1.13	21.5	6.10	41.5	6.59	61.5	6.76	81.5	6.85
2.0	1.45	22.0	6.13	42.0	6.60	62.0	6.77	82.0	6.85
2.5	1.79	22.5	6.15	42.5	6.61	62.5	6.77	82.5	6.85
3.0	2.15	23.0	6.17	43.0	6.61	63.0	6.77	83.0	6.86
3.5	2.50	23.5	6.19	43.5	6.62	63.5	6.78	83.5	6.86
4.0	2.83	24.0	6.21	44.0	6.62	64.0	6.78	84.0	6.86
4.5	3.13	24.5	6.23	44.5	6.63	64.5	6.78	84.5	6.86
5.0	3.41	25.0	6.25	45.0	6.63	65.0	6.78	85.0	6.86
5.5	3.66	25.5	6.26	45.5	6.64	65.5	6.79	85.5	6.86
6.0	3.88	26.0	6.28	46.0	6.64	66.0	6.79	86.0	6.87
6.5	4.08	26.5	6.30	46.5	6.65	66.5	6.79	86.5	6.87
7.0	4.25	27.0	6.31	47.0	6.65	67.0	6.79	87.0	6.87
7.5	4.41	27.5	6.33	47.5	6.66	67.5	6.80	87.5	6.87
8.0	4.55	28.0	6.34	48.0	6.66	68.0	6.80	88.0	6.87
8.5	4.68	28.5	6.35	48.5	6.67	68.5	6.80	88.5	6.87
9.0	4.79	29.0	6.37	49.0	6.67	69.0	6.80	89.0	6.87
9.5	4.90	29.5	6.38	49.5	6.68	69.5	6.81	89.5	6.88
10.0	5.00	30.0	6.39	50.0	6.68	70.0	6.81	90.0	6.88
10.5	5.09	30.5	6.40	50.5	6.69	70.5	6.81	90.5	6.88
11.0	5.17	31.0	6.42	51.0	6.69	71.0	6.81	91.0	6.88
11.5	5.25	31.5	6.43	51.5	6.70	71.5	6.81	91.5	6.88
12.0	5.32	32.0	6.44	52.0	6.70	72.0	6.82	92.0	6.88
12.5	5.39	32.5	6.45	52.5	6.70	72.5	6.82	92.5	6.88
13.0	5.45	33.0	6.46	53.0	6.71	73.0	6.82	93.0	6.88
13.5	5.51	33.5	6.47	53.5	6.71	73.5	6.82	93.5	6.89
14.0	5.57	34.0	6.48	54.0	6.72	74.0	6.82	94.0	6.89
14.5	5.62	34.5	6.49	54.5	6.72	74.5	6.83	94.5	6.89
15.0	5.67	35.0	6.50	55.0	6.72	75.0	6.83	95.0	6.89
15.5	5.71	35.5	6.50	55.5	6.73	75.5	6.83	95.5	6.89
16.0	5.75	36.0	6.51	56.0	6.73	76.0	6.83	96.0	6.89
16.5	5.80	36.5	6.52	56.5	6.73	76.5	6.83	96.5	6.89
17.0	5.83	37.0	6.53	57.0	6.74	77.0	6.84	97.0	6.89
17.5	5.87	37.5	6.54	57.5	6.74	77.5	6.84	97.5	6.90
18.0	5.90	38.0	6.54	58.0	6.74	78.0	6.84	98.0	6.90
18.5	5.94	38.5	6.55	58.5	6.75	78.5	6.84	98.5	6.90
19.0	5.97	39.0	6.56	59.0	6.75	79.0	6.84	99.0	6.90
19.5	6.00	39.5	6.57	59.5	6.75	79.5	6.84	99.5	6.90
20.0	6.03	40.0	6.57	60.0	6.76	80.0	6.85	100.0	6.90

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, §§ 856(c), 1001; 1.856–3, 1.856–5, 1.1001–3.)

Rev. Proc. 2011–16

SECTION 1. PURPOSE

This revenue procedure provides guidance regarding aspects of a taxpayer's qualification as a real estate investment trust (REIT) in the context of transactions involving debt secured by real estate the fair market value of which has declined.

SECTION 2. BACKGROUND

.01 To qualify as a REIT for a taxable year, at least 95 percent of an entity's gross income must be derived from the types of qualifying income listed in section 856(c)(2) of the Internal Revenue Code, and at least 75 percent of its gross income must be derived from the types of qualifying income listed in section 856(c)(3). Specifically, all interest is qualifying income for the 95 percent income test under section 856(c)(2); and interest on obligations secured by mortgages on real property or on interests in real property is qualifying income for purposes of the 75 percent income test under section 856(c)(3).

.02 Section 856(c)(4)(A) provides that at the close of each quarter of its taxable year, at least 75 percent of the value of a REIT's total assets must be represented by real estate assets, cash and cash items (including receivables), and Government securities.

.03 Under section 856(c)(5)(B), the term "real estate assets" includes real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other REITs.

.04 Section 856(c)(5)(C) provides that the term "interests in real property" includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon, but does not include mineral, oil, or gas royalty interests.

.05 If a mortgage loan is secured by both real property and other property, then, for purposes of section 856(c)(3), § 1.856–5(c) of the Income Tax Regulations provides rules for apportioning the interest on the loan between interest on an obligation that is secured by real property (or by an interest in real property) and interest on an obligation that is not so secured. Under this apportionment test, the "loan value of the real property" is compared to the "amount of the loan." If the loan value of the real property is equal to or exceeds the amount of the loan, then all of the interest income from the loan is apportioned to the real property. If the amount of the loan exceeds the loan value of the real property, the interest income apportioned to the real property is an amount equal to the interest income multiplied by a fraction the numerator of which is the loan value of the real property and the denominator of which is the amount of the loan. The interest income apportioned to the other property is the excess of the total interest income over the interest income apportioned to the real property.

.06 For purposes of the apportionment test, § 1.856–5(c)(2) generally defines the "loan value of the real property" that secures a loan as the fair market value of the real property, determined as of the date on which a commitment became binding on the REIT either to make the loan or to purchase the loan, as the case may be. Section 1.856–5(c)(3) defines the "amount of the loan" as the highest principal amount of the loan outstanding during the taxable year.

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

.08 Section 1.860G–2(b)(1) concerns modifications of mortgages held by real estate mortgage investment conduits (REMICs). Certain loan modifications are not significant for purposes of § 1.860G–2(b)(1) even if the modifications are significant under the rules in § 1.1001–3. In particular, under § 1.860G–2(b)(3)(i), if a change in the terms of an obligation is "occasioned by default or a reasonably foreseeable default," the change is not a significant modification for purposes of § 1.860G–2(b)(1), regardless of the modification's status under § 1.1001–3.

.09 Section 857(b)(6) imposes a tax equal to 100 percent of the net income derived from "prohibited transactions." Section 857(b)(6)(B)(iii) defines the term "prohibited transaction" as a sale or other disposition of property that is described in section 1221(a)(1) and that is not foreclosure property.

SECTION 3. SCOPE

.01 Section 4.01 of this revenue procedure applies to a modification of a mortgage loan which (or an interest in which) is held by a REIT if —

(1) The modification was occasioned by default; or

(2) The modification satisfies both of the following conditions:

(a) Based on all the facts and circumstances, the REIT or servicer of the loan (the "pre-modified loan") reasonably believes that there is a significant risk of default of the pre-modified loan upon maturity of the loan or at an earlier date. This reasonable belief must be based on a diligent contemporaneous determination of that risk, which may take into account credible written factual representations made by the issuer of the loan if the REIT or servicer neither knows nor has reason to know that such representations are false. In a determination of the significance of the risk of a default, one relevant factor is how far in the future the possible default may be. There is no maximum period, however, after which default is *per se* not foreseeable. For example, in appropriate circumstances, a REIT or servicer may reasonably believe that there is a significant risk of default even though the foreseen default is more than one year in the future. Similarly, although past performance is another relevant factor for assessing default risk, in appropriate circumstances, a REIT or servicer may reasonably believe that there is a significant risk of default even if the loan is performing, and

(b) Based on all the facts and circumstances, the REIT or servicer reasonably believes that the modified loan presents a substantially reduced risk of default, as compared with the pre-modified loan.

.02 Section 4.02 of this revenue procedure applies to any corporation that has elected to be taxed as a REIT.

SECTION 4. APPLICATION

.01 *Modifications.* If a modification of a mortgage loan is described in section 3.01 of this revenue procedure—

(1) For purposes of ascertaining under § 1.856–5(c)(2) the "loan value of the real property" securing that loan, a REIT may treat the modification as not being a new commitment to make or purchase a loan; and

(2) The modification of the mortgage loan will not be treated as a prohibited transaction under section 857(b)(6).

.02 *Asset test.* The Service will not challenge a REIT's treatment of a loan as being in part a "real estate asset" for purposes of section 856(c)(4) if the REIT treats the loan as being a real estate asset in an amount equal to the lesser of—

(1) The value of the loan as determined under § 1.856–3(a), or

(2) The loan value of the real property securing the loan as determined under § 1.856–5(c) and this revenue procedure.

SECTION 5. EXAMPLES

.01 *Example 1.* In 2007, *X*, a REIT, made a $100 mortgage loan to *A*. *X*'s loan to *A* was secured by both real property and personal property. When *X*'s commitment to make the loan became binding on *X*, the real property had a fair market value of $115. At the end of the calendar quarter in which *X* made the loan, the value of the loan as determined under § 1.856–3(a) was $100. At all times through the end of 2010, under § 1.856–5(c)(3), the amount of the loan continued to be $100.

By the start of 2009, the fair market value of the real property had fallen to $55 and the fair market value of the personal property was $5. They remained at these levels throughout 2009 and 2010. Throughout 2009 and 2010, the value of the loan, as determined under § 1.856–3(a), was $60.

During 2009, *X* and *A* modified the terms of the mortgage loan. The modification of the loan is described in section 3.01 of this revenue procedure and is a significant modification under § 1.1001–3.

(1) *Income Test.* When *X* made the mortgage loan in 2007, the loan value of the real property for purposes of § 1.856–5(c) was its fair market value ($115) determined as of the date on which the commitment to make the loan became binding on *X*. This amount exceeded the amount of the loan for that year ($100). Accordingly, in the year that the loan was made, all of the interest from the loan was apportioned to the real property. *See* § 1.856–5(c)(1).

Between the time that the loan was made and the time of the modification, the loan value of the real property continued to be $115, notwithstanding changes in the fair market value of that real property. *See* § 1.856–5(c)(2). Similarly, the amount of the loan continued to be $100. Accordingly, the loan value of the real property ($115) continued to exceed the amount of the loan ($100), and all of the interest on the loan continued to be apportioned to the real property.

The fair market value of the real property that secured the mortgage loan had fallen to $55 by the time that *X* and *A* modified the loan in 2009. That modification, however, is described in section 3.01, and *X* chose to treat the modification as not being a new commitment to make or purchase a loan. Therefore, the loan value of the real property ($115) does not change. Because the loan value of the real property ($115) continued to exceed the amount of the loan for the year of modification ($100), all of the interest from the loan during that year is apportioned to real property.

(2) *Asset Test.* In 2007, at the end of the calendar quarter in which *X* made the mortgage loan, the value of the loan (as determined under § 1.856–3(a)) was $100, and the loan value of the real property securing the loan (as determined under § 1.856–5(c)(2)) was $115. For this calendar quarter, under section 4.02 of this revenue procedure, *X* may treat the lesser of these two values ($100) as the amount of the loan that is a real estate asset for purposes of section 856(c)(4).

In 2009, at the end of the calendar quarter in which *X* modified the mortgage loan, the value of the loan (as determined under § 1.856–3(a)) was $60, and the loan value of the real property securing the loan (as determined under § 1.856–5(c) and section 4.01 of this revenue procedure) was $115. For this calendar quarter, under section 4.02 of this revenue procedure, *X* may treat the lesser of these two values ($60) as the amount of the loan that is a real estate asset for purposes of section 856(c)(4).

.02 *Example 2.* The facts include all of the facts in Example 1. Additionally, during the first quarter of 2010, *Y*, a REIT, committed to purchase, and purchased, the mortgage loan from *X* for $60.

(1) *Income Test.* Under § 1.856–5(c)(2), the loan value of the real property securing the loan is the fair market value of the real property determined as of the date on which *Y*'s commitment to purchase the loan became binding on *Y* ($55). This value is compared to the amount of the loan for the year ($100). Because the amount of the loan exceeds the loan value of the real property, the interest income apportioned to the real property is an amount equal to the interest income multiplied by a fraction the numerator of which is the loan value of the real property ($55) and the denominator of which is the amount of the loan ($100). Therefore, 55 percent of the interest income from *Y*'s loan is apportioned to the real property securing the loan. Interest income apportioned to the other property is the excess of the total interest income over the interest income apportioned to the real property. *See* § 1.856–5(c)(2).

(2) *Asset Test.* At the end of every calendar quarter during 2010, the value of the loan (as determined under § 1.856–3(a)) was $60, and the loan value of the real property securing the loan (as determined under § 1.856–5(c) and this revenue procedure) was $55. For every calendar quarter during 2010, under section 4.02 of this revenue procedure, *Y* may treat the lesser of these two values ($55) as the amount of the loan that is a real estate asset for purposes of section 856(c)(4).

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for all calendar quarters and all taxable years.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Jonathan D. Silver of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Jonathan D. Silver at (202) 622–3930 (not a toll-free call).

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26 CFR 601.204: Changes in accounting periods and methods of accounting.
(Also Part I, §§ 451; 461; 1.451–5.)

Rev. Proc. 2011–17

PURPOSE

This revenue procedure provides a safe harbor method of accounting for the treatment of gift cards issued to customers in exchange for returned merchandise. This revenue procedure also provides administrative procedures for a taxpayer within the scope of this revenue procedure to obtain consent to change to the method of accounting permitted in section 4 of this revenue procedure.

SECTION 2. BACKGROUND

.01 Section 451 of the Internal Revenue Code provides that the amount of any item of gross income is recognized in the taxable year the taxpayer receives the item unless, under the method of accounting used in computing taxable income, the income is properly recognized in a different period. Section 1.451–1(a) of the Income Tax Regulations provides that, under an accrual method of accounting, income is includible in gross income when all the events have occurred that fix the right to receive the income and the amount can be determined with reasonable accuracy. All the events that fix the right to receive income generally occur when (1) the taxpayer earns the payment through performance, (2) payment is due to the taxpayer, or (3) the taxpayer receives the payment, whichever happens first. See Rev. Rul. 84–31, 1984–1 C.B. 127.

.02 A taxpayer generally must recognize advance payments in income in the year of receipt, because receipt satisfies the all events test of § 1.451–1(a). However deferral beyond the year of receipt is permitted in two situations.

(1) Section 1.451–5 generally allows an accrual method taxpayer to defer recognizing advance payments for goods as income until the taxable year the taxpayer recognizes the advance payments in revenue under the taxpayer's method of accounting for financial reporting purposes. However, § 1.451–5(c) limits deferral of substantial advance payments for inventoriable goods to the end of the second taxable year following the year the taxpayer receives the payments.

(2) Rev. Proc. 2004–34, 2004–1 C.B. 991, generally allows an accrual method taxpayer to defer recognizing advance payments received for goods, services, or a mixture of goods and services as income until the taxable year the taxpayer recognizes the advance payments in revenue under the taxpayer's method of accounting for financial reporting purposes. However, section 5.02(1)(a)(ii) of Rev. Proc. 2004–34 limits the deferral to the end of the next succeeding taxable year following the year the taxpayer receives the payments.

.03 Section 461(a) provides that a taxpayer takes a deduction or credit in the taxable year that is the proper taxable year under the method of accounting used in computing taxable income. Section 1.461–1(a)(2)(i) provides that, under an accrual method of accounting, a liability (as defined in § 1.446–1(c)(1)(ii)(B)) is incurred, and generally is taken into account for federal income tax purposes, in the taxable year in which all the events have occurred that establish the fact of the liability, the amount of the liability can be determined with reasonable accuracy, and economic performance has occurred. Section 1.461–4(g)(3) provides that economic performance occurs for a refund liability when the refund is paid (whether paid in property, money, or a reduction in the price of goods or services to be provided in the future). Section 1.461–4(g)(3) generally applies to refund liabilities regardless of whether they are characterized as deductions from gross income, adjustments to gross receipts or total sales, or adjustments or additions to cost of goods sold. Thus, for federal income tax purposes, refunds reducing gross receipts generally are incurred when paid. Sections 1.61–3(a) and 1.446–1(c)(1)(ii)(B).

.04 Taxpayers (merchants) commonly handle returns of inventoriable goods in one of two ways. The merchant may give the customer a cash refund in exchange for the returned goods, or the merchant may issue a credit, for example in the form of a gift card, to the customer for the returned goods.

(1) A taxpayer that pays a customer an immediate cash refund for returned goods has incurred a refund liability. The payment satisfies the requirements of § 1.461–1(a)(2)(i) (including economic performance), therefore the taxpayer may reduce gross receipts for the amount of the refund. If the customer uses the refund to purchase a gift card, the taxpayer has received an advance payment from the sale of a gift card. The taxpayer may defer the proceeds of this sale under a method of accounting that complies with either § 1.451–5 or Rev. Proc. 2004–34.

(2) A taxpayer that, instead of paying a cash refund, only will issue a gift card to a customer in exchange for returned goods does not have a fixed liability under § 1.461–1(a)(2)(i) because it is conditioned on the future redemption of the gift card.

.05 Many commentators in the retail industry contend that cash refunds and gift cards provided as refunds for returned goods should be treated the same. The commentators argue that issuing a gift card for returned goods is tantamount to making a cash refund that the customer immediately uses to purchase a gift card. To avoid disputes about the proper characterization of gift cards issued for returned goods, provide better matching of income and costs, and simplify recordkeeping, the Internal Revenue Service will permit a taxpayer within the scope of this revenue procedure to treat gift cards issued for returned goods as the payment of a cash refund and sale of a gift card. A taxpayer may use this method whether or not it is the taxpayer's policy to provide a cash refund for returned goods.

.06 In general, a taxpayer must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Sections 446(e) and 1.446–1(e)(2)(i). Section 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures stating the limitations, terms, and conditions of the Commissioner's consent to change a method of accounting. Section 481(a) generally requires adjustments to prevent duplication or omission of amounts when a taxpayer changes a method of accounting.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers engaged in the trade or business of selling goods at retail that use an overall accrual method of accounting and issue gift cards described in section 4.02 of this revenue procedure in exchange for returned goods.

SECTION 4. APPLICATION

.01 *In general*. A taxpayer within the scope of this revenue procedure may treat the issuance of a gift card in exchange for returned goods as (1) the payment of a cash refund in the amount of the gift card, and (2) the sale of a gift card in the amount of the gift card. The taxpayer may account for the amount deemed received for the sale of the gift card under § 1.451–5 or Rev. Proc. 2004–34, if otherwise eligible.

.02 *Gift cards*. For purposes of this revenue procedure, a gift card is any evidence of a promise to provide a specific dollar amount of goods and/or services to a customer in a future sale, whether imprinted electronically on a plastic card, issued electronically with a special code, provided as a printed certificate, or recorded on a taxpayer's books. A card or other evidence of a promise to provide a specific dollar amount of goods and/or services is not a gift card for purposes of this revenue procedure if the customer must perform any act or service in addition to presenting the card, such as purchasing additional products, to obtain the goods and/or services.

SECTION 5. CHANGE IN METHOD OF ACCOUNTING

.01 *Consent to change*. A change in a taxpayer's treatment of gift cards issued as a refund for returned goods is a change in method of accounting within the meaning of §§ 446 and 481 and the regulations thereunder.

(1) *Automatic consent*. A taxpayer that wants to change its method of accounting to the method of accounting permitted in section 4 of this revenue procedure must obtain the consent of the Commissioner under § 446(e) and § 1.446–1(e)(3) by following the automatic consent procedures in Rev. Proc. 2008–52, 2008–2 C.B. 587, as modified, amplified, and clarified by Rev. Proc. 2009–39, 2009–38 I.R.B. 371, or its successor, except as provided below. For purposes of section 6.02(4) of Rev. Proc. 2008–52, the taxpayer must include on line 1a of the Form 3115 the designated automatic accounting method change number 156. A taxpayer may change its method of accounting to a proper method under Rev. Proc. 2004–34 and to the method permitted in section 4 of this revenue procedure on one Form 3115 and must include both change numbers on line 1a.

(2) *Advance consent*. A taxpayer may change its method of accounting to a proper method under § 1.451–5 and to the method permitted in section 4 of this revenue procedure on one Form 3115 but must use the advance consent procedures of Rev. Proc. 97–27, 1997–1 C.B. 680.

.02 *Transition rules*. If a taxpayer within the scope of this revenue procedure has timely requested consent on or before January 5, 2011, under Rev. Proc. 97–27 to change its method of accounting for gift cards issued in exchange for returned goods and the Form 3115, *Application for Change in Accounting Method*, is pending with the national office, the taxpayer may convert its Form 3115 to an application for automatic consent under Rev. Proc. 2008–52, if otherwise eligible. The taxpayer must notify the national office of the conversion before the national office issues a letter ruling under Rev. Proc. 97–27. If the taxpayer converts the Form 3115 under this section 5.02 before the national office has ruled on the Form 3115, the national office will return the Form 3115 to the taxpayer and refund the user fee.

.03 *Scope limitations waived*. The scope limitations in section 4.02 of Rev. Proc. 2008–52 do not apply to this change in method of accounting for a taxpayer's first or second taxable year ending on or after December 31, 2010. However, if a taxpayer is under examination, before an appeals office, or before a federal court for any income tax issue when the taxpayer files the copy of the Form 3115 with the national office, the taxpayer must provide a copy of the Form 3115 to the examining agent, appeals officer, or counsel for the government, as appropriate, at the same time. The Form 3115 must contain the name(s) and telephone number(s) of the examining agent, appeals officer, or counsel for the government, as appropriate.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2008–52 is modified to include in the APPENDIX the automatic change in method of accounting permitted by this revenue procedure.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2010.

SECTION 8. AUDIT PROTECTION

If a taxpayer within the scope of this revenue procedure used a method of accounting permitted by section 4 of this revenue procedure in a taxable year ending before December 31, 2010, the Service will not challenge the use of that method of accounting. Moreover, if the use by a taxpayer within the scope of this revenue procedure of a method of accounting permitted by section 4 of this revenue procedure is an issue under consideration in an examination, in appeals, or before the U.S. Tax Court, the Service will not further pursue the issue.

DRAFTING INFORMATION

The principal author of this revenue procedure is Sean M. Dwyer of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Dwyer at (202) 622–5020 (not a toll-free number).

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26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part 1: §§ 446, 451; 1.446–1, 1.451–1.)

Rev. Proc. 2011–18

SECTION 1. PURPOSE

This revenue procedure allows taxpayers to defer recognizing in gross income advance payments received from the sale of gift cards that are redeemable for goods or services of the taxpayer or a third party. This revenue procedure modifies and clarifies Rev. Proc. 2004–34, 2004–1 C.B. 991.

SECTION 2. BACKGROUND

.01 The sale of gift cards and gift certificates is a widespread business practice in many industries, especially retail. For income tax purposes, payment for a gift certificate or gift card is viewed as payment for goods or services to be provided in the future.

.02 In general, amounts received by an accrual method taxpayer for goods or services to be provided in the future (advance payments) must be included in gross income in the taxable year of receipt. *See* § 451; *Schlude v. Commissioner*, 372 U.S. 128 (1963); Rev. Rul. 84–31, 1984–1 C.B. 127. Two exceptions to this general rule are provided by § 1.451–5 of the Income Tax Regulations and Rev. Proc. 2004–34.

.03 Section 1.451–5 generally allows accrual method taxpayers a limited deferral for advance payments received for the sale of goods. The taxpayer may defer recognition of this income until the taxable year that the payments are recognized in revenues under the taxpayer's method of accounting for financial reporting purposes. However, § 1.451–5(c) provides that a taxpayer generally may not defer advance payments for inventoriable goods beyond the end of the second taxable year following the year the taxpayer receives substantial advance payments.

.04 Rev. Proc. 2004–34 provides a "deferral method" of accounting that allows an accrual method taxpayer receiving advance payments for goods or services to defer recognizing income to the extent the taxpayer defers recognizing the payments as revenues in its "applicable financial statement." If the taxpayer does not include advance payments as revenues in its applicable financial statement in the year of receipt, the taxpayer must include the advance payments in gross income in the next succeeding taxable year.

.05 The manner in which retailers market, sell to customers, and redeem (that is, accept as payment for goods or services) gift cards has evolved over time. Historically, a single retailer would sell a gift certificate or gift card to a buyer and would redeem the card or certificate itself by providing goods or services to the holder. Under Rev. Proc. 2004–34, the retailer could defer recognizing the advance payment from the sale of the gift card. Today, however, gift cards are commonly sold by one retailer and redeemed either by that retailer or by others (related or unrelated to the selling entity) under a gift card service agreement.

.06 A taxpayer that sells gift cards (gift card entity) typically operates its gift card program under a service agreement with participating merchants. For example:

- Members of an affiliated group of corporations may establish a gift card subsidiary to sell gift cards that may be redeemed for goods or services provided by the gift card subsidiary or other members of the affiliated group;
- A franchisor, purchasing cooperative, not-for-profit membership organization, or franchisee may sell gift cards that may be redeemed for goods or services provided by independently-owned franchisees or members;
- A restaurant management company may sell gift cards that may be redeemed by participating restaurants in different geographic locations or with different trade names; or
- A retailer may issue a gift card that may be redeemed for merchandise at the retailer's stores, retail stores operated by a related party, or retail stores operated by unrelated parties.

.07 Although gift card entity structures and gift card service agreements can vary widely, it is common for a gift card entity to receive and hold the proceeds from gift card sales until a customer uses the card to purchase merchandise or services. If a customer uses a gift card to purchase merchandise or services from a participating merchant, the participating merchant is obligated to accept the gift card as payment for its goods or services and the gift card entity is obligated to reimburse the participating merchant for the sales price of the goods or services purchased with the gift card. Under the terms of a typical gift card service agreement, the gift card entity is primarily liable to the customer for the value of the gift card until the card expires or is redeemed.

.08 The Service and the Treasury Department have concluded that, provided the other requirements of Rev. Proc. 2004–34 are met, a taxpayer that sells gift cards redeemable through other entities should be treated the same as a taxpayer that sells gift cards redeemable only by that taxpayer. Accordingly, this revenue procedure modifies the definition of advance payments in Rev. Proc. 2004–34 to allow deferral of advance payments received under additional types of gift card arrangements. This revenue procedure, however, does not modify § 1.451–5 to allow deferral of advance payments received under additional types of gift card arrangements. Section 1.451–5 applies only to "an agreement for the sale or other disposition in a future taxable year of goods *held by the taxpayer* primarily for sale to customers in the ordinary course of his trade or business." Goods provided by entities other than the taxpayer issuing the gift card are not "held by the taxpayer" for sale as required by § 1.451–5.

SECTION 3. MODIFICATIONS TO REV. PROC. 2004–34

.01 Section 4.01(3) of Rev. Proc. 2004–34 is modified to revise paragraph (h), revise paragraph (i) and redesignate it as paragraph (j), and add a new paragraph (i). As modified, the provisions read as follows:

.01 *Advance Payment*. Except as provided in section 4.02 of this revenue procedure, a payment received by a taxpayer is an "advance payment" if —

* * *

(3) the payment is for —

* * *

(h) memberships in an organization (other than memberships for which an election under § 456 is in effect);

(i) an eligible gift card sale; or

(j) any combination of items described in subparagraphs (a) through

(i) of this section 4.01(3).

* * *

.02 Section 4 of Rev. Proc. 2004–34 is modified to add new sections 4.07 and 4.08 to read as follows:

.07 *Eligible Gift Card Sale*. An eligible gift card sale is the sale of a gift card (or gift certificate) if: (1) the taxpayer is primarily liable to the customer (or holder of the gift card) for the value of the card until redemption or expiration, and (2) the gift card is redeemable by the taxpayer or by any other entity that is legally obligated to the taxpayer to accept the gift card from a customer as payment for items listed in sections 4.01(3)(a)-(j) of this revenue procedure;

.08 *Financial Statement for Consolidated Group Members*. If the taxpayer is a member of an affiliated group of corporations that files a consolidated return for federal income tax purposes, the group's financial statement (as defined in section 4.06 of this revenue procedure) is a financial statement of the taxpayer.

.03 Section 5.03 of Rev. Proc. 2004–34 is modified to add the following new Examples 23, 24, and 25 to read as follows:

Example 23. *R* corporation operates department stores. *U* corporation, *V* corporation, and *W* corporation are wholly owned domestic subsidiaries of *R* that file a consolidated federal income tax return with *R*. *X* corporation is a controlled foreign subsidiary of *R* that is prohibited from filing a consolidated return with *R*. *U* sells Brand A goods, *V* sells Brand B goods, *X* sells Brand C goods, and *Z* is an unrelated entity that sells Brand D goods. *W* administers a gift card program for the *R* consolidated group, *X,* and *Z.* Pursuant to the underlying agreements, *W* issues gift cards that are redeemable for goods or services offered by *U*, *V*, *X*, and *Z*. In addition, *U*, *V*, *X*, and *Z* sell gift cards to customers on behalf of *W* and remit amounts received to *W*. The agreements provide that *W* is primarily liable to the customer for the value of the gift card until redemption, and *U*, *V*, *X*, and *Z* are obligated to accept the gift card as payment for goods or services. When a customer purchases goods or services with a gift card at *U*, *V*, *X*, or *Z*, *W* reimburses that entity for the sales price of the goods or services purchased with the gift card, up to the total gift card value. In Year 1, *W* sells gift cards with a total value of $900,000, and, at the end of Year 1, the unredeemed balance of the gift cards is $100,000. In the consolidated group's applicable financial statement, the group recognizes revenue from the sale of a gift card when the gift card is redeemed. *W* tracks sales and redemptions of gift cards electronically, is able to determine the extent to which advance payments are recognized in revenues in its consolidated applicable financial statement for the taxable year of receipt, and meets the requirements of section 5.02(1)(b)(i) of this revenue procedure. The payments *W* receives from the sale of gift cards are advance payments because they are payments for eligible gift card sales under section 4.01(3)(i) of this revenue procedure and meet the requirements of sections 4.01(1) and (2). Thus, *W* is eligible to use the Deferral Method. At the end of Year 1, *W* recognizes $800,000 in income in its consolidated applicable financial statement. Under the Deferral Method, *W* must include $800,000 of the payments from gift card sales in gross income in Year 1 and the remaining $100,000 of the payments in gross income in Year 2.

Example 24. *W* is a Subchapter S corporation that operates an affiliated restaurant corporation and manages other affiliated restaurants. These other restaurants are owned by other Subchapter S corporations, partnerships, and limited liability companies. *W* has a partnership interest or an equity interest in some of the restaurants. *W* administers a gift card program for participating restaurants. Each participating restaurant operates under a different trade name. Under the gift card program, *W* and each of the participating restaurants sell gift cards, which are issued with *W*'s brand name and are redeemable at all participating restaurants. Participating restaurants sell the gift cards to customers and remit the proceeds to *W*. *W* is primarily liable to the customer for the value of the gift card until redemption, and the participating restaurants are obligated under an agreement with *W* to accept the gift card as payment for food, beverages, taxes, and gratuities. When a customer uses a gift card to make a purchase at a participating restaurant, *W* is obligated to reimburse that restaurant for the amount of the purchase, up to the total gift card value. In *W*'s applicable financial statement, *W* recognizes revenue from the sale of a gift card when a gift card is redeemed at a participating restaurant. *W* tracks sales and redemptions of gift cards electronically, is able to determine the extent to which advance payments are recognized in revenues in its applicable financial statement for the taxable year of receipt, and meets the requirements of section 5.02(1)(b)(i) of this revenue procedure. The payments *W* receives from the sale of gift cards are advance payments because they are payments for eligible gift card sales under section 4.01(3)(i) of this revenue procedure and meet the requirements of sections 4.01(1) and (2). Thus, *W* is eligible to use the Deferral Method.

Example 25. *X* is a corporation that operates for the benefit of its franchisee members, who own and operate domestic and international individual member hotels. *X* collects membership fees from the member hotels in exchange for providing a wide variety of management support services, which include making reservations for customers at the various member hotels. *X* also administers a gift card program for its members by selling gift cards that may be redeemed for hotel rooms and food or beverages provided by any member hotel. The agreements underlying the gift card program provide that *X* is entitled to the proceeds from the sale of the gift cards, must reimburse the member hotel for the value of a gift card redeemed, and until redemption remains primarily liable to the customer for the value of the card. In *X*'s applicable financial statement, *X* recognizes payments from the sale of a gift card when the card is redeemed. *X* tracks sales and redemptions of gift cards electronically, is able to determine the extent to which advance payments are recognized in revenues in its applicable financial statement for the taxable year of receipt, and meets the requirements of section 5.02(1)(b)(i) of this revenue procedure. The payments *X* receives from the sale of gift cards are advance payments because they are payments for eligible gift card sales under section 4.01(3)(i) of this revenue procedure and meet the requirements of sections 4.01(1) and (2). Thus, *X* is eligible to use the Deferral Method.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2010.

SECTION 5. AUDIT PROTECTION

For taxable years ending before December 31, 2010, the Service will not raise upon examination the issue of whether the Deferral Method provided in section 5 of Rev. Proc. 2004–34 can apply to eligible gift card sales as defined in section 4.07 of that revenue procedure. Moreover, if the taxpayer's use of the Deferral Method for eligible gift card sales is an issue under consideration in examination, appeals, or before the U.S. Tax Court in a taxable year that ends before December 31, 2010, the Service will not further pursue the issue.

SECTION 6. CHANGE IN METHOD OF ACCOUNTING

.01 *Consent to change*.

(1) *Automatic consent*. A taxpayer that wants to change its method of accounting to one of the permissible methods of accounting for advance payments for eligible gift card sales (except methods under section 5.02(3)(b)(i) or (iii) of Rev. Proc. 2004–34) makes the change under section 15.07 of Rev. Proc. 2008–52, 2008–2 C.B. 587, as modified, amplified, and clarified by Rev. Proc. 2009–39, 2009–38 I.R.B. 371, or its successor.

(2) *Advance consent*. A taxpayer that wants to use the Deferral Method for payments for which a method under section 5.02(3)(b)(i) or (iii) of Rev. Proc. 2004–34 applies must follow the change in method of accounting procedures in Rev. Proc. 97–27.

.02 *Transition rules*. If a taxpayer has timely requested consent on or before January 5, 2011, under Rev. Proc. 97–27, 1997–1 C.B. 680, to change its method of accounting for advance payments for eligible gift card sales and the Form 3115, *Application for Change in Accounting Method*, is pending with the national office, the taxpayer may convert its Form 3115 to an application for automatic consent under Rev. Proc. 2008–52, if otherwise eligible. The taxpayer must notify the national office of the conversion before the national office issues a letter ruling under Rev. Proc. 97–27. If the taxpayer converts the Form 3115 under this section 4.02 before the national office has ruled on the Form 3115, the national office will return the Form 3115 to the taxpayer and refund the user fee.

.03 *Scope limitations waived*. The scope limitations in section 4.02 of Rev. Proc. 2008–52 do not apply to this change in method of accounting for a taxpayer's first or second taxable year ending on or after December 31, 2010. If a taxpayer is under examination, before an appeals office, or before a federal court for any income tax issue when the taxpayer files the copy of the Form 3115 with the national office, the taxpayer must provide a copy of the Form 3115 to the examining agent, appeals officer, or counsel for the government, as appropriate, at the same time. The Form 3115 must contain the name(s) and telephone number(s) of the examining agent, appeals officer, or counsel for the government, as appropriate.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2004–34 is modified and clarified.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Jamie J. Kim of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Jamie J. Kim or Susie K. Bird at (202) 622–4950 (not a toll-free call).

Part IV. Items of General Interest

Corrections to Revenue Procedure 2011–1, User Fees in Appendix A

Announcement 2011–7

This document contains corrections to Revenue Procedure 2011–1, 2011–1 I.R.B. 1, which contained two outdated references to user fee amounts.

Correction 1:

Appendix A(A)(5)(a) incorrectly read:

"Substantially identical letter rulings requested (other than changes in methods of accounting requested on Form 3115)

Situations in which a taxpayer requests substantially identical letter rulings for multiple entities with a common member or sponsor, or for multiple members of a common entity, or for two or more identical trusts or for multiple beneficiaries of a trust or a trust divided into identical subtrusts or for husband and wife making split gifts, for each additional letter ruling request after the **$11,500** fee or reduced fee, as applicable, has been paid for the first letter ruling request

NOTE: Each entity or member that is entitled to the user fee under paragraph (A)(5)(a) of this appendix, that receives relief under § 301.9100–3 (for example, an extension of time to file an election) will be charged a separate user fee for the letter ruling request on the underlying issue.

NOTE: The fee charged for the first letter ruling is the highest fee applicable to any of the entities. If any of the additional entities would meet the income test for the $625 fee, then that fee applies."

Appendix A(A)(5)(a) should have read:

"Substantially identical letter rulings requested (other than changes in methods of accounting requested on Form 3115)

Situations in which a taxpayer requests substantially identical letter rulings for multiple entities with a common member or sponsor, or for multiple members of a common entity, or for two or more identical trusts or for multiple beneficiaries of a trust or a trust divided into identical subtrusts or for husband and wife making split gifts, for each additional letter ruling request after the **$14,000** fee or reduced fee, as applicable, has been paid for the first letter ruling request

NOTE: Each entity or member that is entitled to the user fee under paragraph (A)(5)(a) of this appendix, that receives relief under § 301.9100–3 (for example, an extension of time to file an election) will be charged a separate user fee for the letter ruling request on the underlying issue.

NOTE: The fee charged for the first letter ruling is the highest fee applicable to any of the entities. If any of the additional entities would meet the income test for the $625 fee, then that fee applies."

Correction 2:

Appendix A(A)(5)(b) read:

"Identical change in method of accounting requested on a single Form 3115, *Application for Change in Accounting Method,* for a situation (but not a combination of situations) described in section 15.07(4).

A situation (but not a combination of situations) described in section 15.07(4) for each additional applicant seeking the identical change in method of accounting on the same Form 3115 after the **$3,800** fee or $625 reduced fee, as applicable, has been paid for the first applicant."

Appendix A(A)(5)(b) should have read:

"Identical change in method of accounting requested on a single Form 3115, *Application for Change in Accounting Method,* for a situation (but not a combination of situations) described in section 15.07(4).

A situation (but not a combination of situations) described in section 15.07(4) for each additional applicant seeking the identical change in method of accounting on the same Form 3115 after the **$4,200** fee or $625 reduced fee, as applicable, has been paid for the first applicant."

The principal author of this announcement is Kimberly S. Barsa of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this announcement, contact Kimberly S. Barsa at (202) 622–3620 (not a toll-free call).

Correction to Revenue Procedure 2011–8, User Fee Schedule

Announcement 2011–8

Revenue Procedure 2011–8 as published on January 3, 2011 (2011–1 I.R.B. 237) contains an error in the user fee schedule that applies to a nonmass submitter of a master or prototype (M&P) plan. Revenue Procedure 2011–8 provides guidance for complying with the user fee program of the Internal Revenue Service on matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division. This announcement corrects sections 2.03, 6.03(1) and 6.03(2) of Rev. Proc. 2011–8.

The words "or nonmass submitter" are added to section 6.03(1). This correction clarifies that the $12,000 user fee for the basic plan document with one adoption agreement applies to both a mass submitter and a nonmass submitter. The word "additional" is added to section 6.03(2) to clarify that the $9,500 fee for an M&P sponsor's nonmass submission applies to each additional adoption agreement.

Section 6.03(1) and (2) of Rev. Proc 2011–8 now reads as follows:

(1) Mass submitter or nonmass submitter M & P plan, per basic plan document, new or amended, with one adoption agreement	$12,000
(2) Nonmass submission (new or amended) by M & P sponsor, per additional adoption agreement	$9,500

Section 2.03 is amended to read as follows:

.03 Changed the fees in sections 6.03(2) and 6.04(1)(b) to $9,500, added “additional” to section 6.03(2), and inserted “or nonmass submitter” after “Mass Submitter” in section 6.03(1).

Drafting Information

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

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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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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