

## **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**

#### **T.D. 9513, page 501.**

Final regulations under section 1001 of the Code clarify the extent to which the deterioration in an issuer's financial condition is taken into account to determine whether a modified debt instrument will be recharacterized as an instrument that is not debt.

#### **REG-131151-10, page 519.**

Proposed regulations under section 7623(a) of the Code relate to the payment of rewards and awards under section 7623(b).

#### **REG-131947-10, page 521.**

Proposed regulations under section 1273 of the Code clarify the circumstances in which property is traded on an established market (that is, publicly traded) for purposes of determining the issue price of a debt instrument. A public hearing is scheduled for April 13, 2011.

#### **REG-146097-09, page 516.**

Proposed regulations under section 6049 of the Code extend the annual information reporting requirement with respect to bank deposit interest to all nonresident alien individuals who are residents of any foreign country. These proposed regulations withdraw the 2002 proposed regulations which would require reporting only for nonresident aliens that are residents of Canada. A public hearing is scheduled for April 28, 2011.

#### **Notice 2011-8, page 503.**

This notice provides adjusted limitations on housing expenses for tax year 2011 for purposes of section 911 of the Code. Notices 2006-87, 2007-25, 2007-77, 2008-107, and 2010-27 superseded.

### **EXEMPT ORGANIZATIONS**

#### **Announcement 2011-13, page 525.**

A list is provided of organizations now classified as private foundations.

#### **Announcement 2011-15, page 526.**

The IRS has revoked its determination that Acclimation Incorporated of Stockton, CA; At Your Service: Prestigious In-Home Care, Inc., of San Antonio, TX; Civil Liberty and Indigent Parents Institution and Charity of Adams Run, SC; Debt Serve, Inc., of Fort Lauderdale, FL; and International Fund for Protection of Victims of Crimes, Inc., of New York, NY, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

### **ESTATE TAX**

#### **REG-131151-10, page 519.**

Proposed regulations under section 7623(a) of the Code relate to the payment of rewards and awards under section 7623(b).

### **GIFT TAX**

#### **REG-131151-10, page 519.**

Proposed regulations under section 7623(a) of the Code relate to the payment of rewards and awards under section 7623(b).

**(Continued on the next page)**

Finding Lists begin on page ii.



## **EMPLOYMENT TAX**

### **REG-131151-10, page 519.**

Proposed regulations under section 7623(a) of the Code relate to the payment of rewards and awards under section 7623(b).

## **EXCISE TAX**

### **REG-131151-10, page 519.**

Proposed regulations under section 7623(a) of the Code relate to the payment of rewards and awards under section 7623(b).

## **ADMINISTRATIVE**

### **Notice 2011-12, page 514.**

This notice provides that the procedure for determining the amount of income tax withholding on wages of nonresident alien employees changes for wages paid after December 31, 2010.

# The IRS Mission

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

force the law with integrity and fairness to all.

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

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

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

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

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

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

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

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

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

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

26 CFR 1.1001-3: Modifications of debt instruments.

### T.D. 9513

#### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

#### Modifications of Debt Instruments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations relating to the modification of debt instruments. The regulations clarify the extent to which the deterioration in the financial condition of the issuer is taken into account to determine whether a modified debt instrument will be recharacterized as an instrument or property right that is not debt. The regulations provide needed guidance to issuers and holders of debt instruments.

DATES: *Effective Date:* These regulations are effective on January 7, 2011.

*Applicability Date:* For dates of applicability, see §1.1001-3(h).

FOR FURTHER INFORMATION CONTACT: Diana Imholtz at (202) 622-3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

This document contains amendments to 26 CFR part 1. On June 4, 2010, a notice of proposed rulemaking (REG-106750-10, 2010-25 I.R.B. 765) was published in the **Federal Register** (75 FR 31736) that proposed amendments to §1.1001-3 to clarify the circumstances in which the credit quality of the issuer should be considered in determining the nature of the

instrument resulting from an alteration or modification of a debt instrument. Because no requests to speak were submitted by August 11, 2010, no public hearing was held. One written comment was received in response to the notice of proposed rulemaking. After consideration of this comment, the proposed regulations are adopted as revised by this Treasury decision. The revisions are discussed in this preamble.

#### Explanation and Summary of Comments

The only comment received on the proposed regulations requested that the regulations clarify that §1.1001-3 applies not only to determine whether an exchange of the original debt instrument for a modified instrument has occurred but also to classify the modified instrument resulting from the exchange. The IRS and the Treasury Department intend that Federal income tax principles be used to determine the classification of a modified instrument resulting from an exchange except as specifically provided in §1.1001-3(f)(7). To avoid doubt on the operation of the rules in the proposed regulations, the final regulations add language to the general rule of §1.1001-3(b) to make clear that the rules provided in §1.1001-3(f)(7) apply to determine whether the modified instrument received in an exchange will be classified as debt for Federal income tax purposes. Thus, unless there is a substitution of a new obligor or the addition or deletion of a co-obligor, all relevant factors (for example, creditor rights or subordination) other than any deterioration in the financial condition of the issuer are taken into account in determining whether a modified instrument is properly classified as debt for Federal income tax purposes.

#### Effective/Applicability Date

The regulations apply to alterations of the terms of a debt instrument on or after January 7, 2011. A taxpayer, however, may rely on §1.1001-3(f)(7) for alterations of the terms of a debt instrument occurring before that date.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of these final regulations is Diana Imholtz, Office of Associate Chief Counsel (Financial Institutions & Products), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

#### Adoption of the Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1001-3 is amended by:

1. Revising paragraphs (b), (c)(2)(ii), (e)(5)(i) and (h).
2. Adding paragraph (f)(7).

The revisions and addition read as follows:

*§1.1001-3 Modifications of debt instruments.*

\* \* \* \* \*

(b) *General rule.* For purposes of §1.1001-1(a), a significant modification of a debt instrument, within the meaning of this section, results in an exchange of the original debt instrument for a modified instrument that differs materially either in kind or in extent. A modification that is not a significant modification is not an exchange for purposes of §1.1001-1(a). Paragraphs (c) and (d) of this section define the term *modification* and contain examples illustrating the application of the rule. Paragraphs (e) and (f) of this section provide rules for determining when a modification is a significant modification. Paragraph (f) of this section also provides rules for determining whether the modified instrument received in an exchange will be classified as an instrument or property right that is not debt for federal income tax purposes. Paragraph (g) of this section contains examples illustrating the application of the rules in paragraphs (e) and (f) of this section.

(c) \* \* \*

(2) \* \* \*

(ii) *Property that is not debt.* An alteration that results in an instrument or property right that is not debt for Federal income tax purposes is a modification unless the alteration occurs pursuant to a holder's option under the terms of the instrument to convert the instrument into equity of the issuer (notwithstanding paragraph (c)(2)(iii) of this section). The rules of paragraph (f)(7) of this section apply to determine whether an alteration or modification results in an instrument or property right that is not debt.

\* \* \* \* \*

(e) \* \* \*

(5) *Changes in the nature of a debt instrument—(i) Property that is not debt.* A

modification of a debt instrument that results in an instrument or property right that is not debt for Federal income tax purposes is a significant modification. The rules of paragraph (f)(7) of this section apply to determine whether a modification results in an instrument or property right that is not debt.

\* \* \* \* \*

(f) \* \* \*

(7) *Rules for determining whether an alteration or modification results in an instrument or property right that is not debt—(i) In general.* Except as provided in paragraph (f)(7)(ii) of this section, the determination of whether an instrument resulting from an alteration or modification of a debt instrument will be recharacterized as an instrument or property right that is not debt for Federal income tax purposes shall take into account all of the factors relevant to such a determination.

(ii) *Financial condition of the obligor—(A) Deterioration in financial condition of the obligor generally disregarded.* Except as provided in paragraph (f)(7)(ii)(B) of this section, in making a determination as to whether an instrument resulting from an alteration or modification of a debt instrument will be recharacterized as an instrument or property right that is not debt, any deterioration in the financial condition of the obligor between the issue date of the debt instrument and the date of the alteration or modification (as it relates to the obligor's ability to repay the debt instrument) is not taken into account. For example, any decrease in the fair market value of a debt instrument (whether or not the debt instrument is publicly traded) between the issue date of the debt instrument and the date of the alteration or modification is not taken into

account to the extent that the decrease in fair market value is attributable to the deterioration in the financial condition of the obligor and not to a modification of the terms of the instrument.

(B) *Substitution of a new obligor; addition or deletion of co-obligor.* If there is a substitution of a new obligor or the addition or deletion of a co-obligor, the rules in paragraph (f)(7)(ii)(A) of this section do not apply.

\* \* \* \* \*

(h) *Effective/applicability date—(1) In general.* Except as otherwise provided in paragraph (h)(2) of this section, this section applies to alterations of the terms of a debt instrument on or after September 24, 1996. Taxpayers, however, may rely on this section for alterations of the terms of a debt instrument after December 2, 1992, and before September 24, 1996.

(2) *Exception.* Paragraph (f)(7) of this section applies to an alteration of the terms of a debt instrument on or after January 7, 2011. A taxpayer, however, may rely on paragraph (f)(7) of this section for alterations of the terms of a debt instrument occurring before that date.

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

Approved December 21, 2010.

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

(Filed by the Office of the Federal Register on January 6, 2011, 8:45 a.m., and published in the issue of the Federal Register for January 7, 2011, 76 F.R. 1063)

# Part III. Administrative, Procedural, and Miscellaneous

## Determination of Housing Cost Amounts Eligible for Exclusion or Deduction for 2011

### Notice 2011-8

#### SECTION 1. PURPOSE

This notice provides adjustments to the limitation on housing expenses for purposes of section 911 of the Internal Revenue Code (Code) for specific locations for 2011. These adjustments are made on the basis of geographic differences in housing costs relative to housing costs in the United States.

#### SECTION 2. BACKGROUND

Section 911(a) of the Code allows a qualified individual to elect to exclude from gross income the foreign earned income and housing cost amount of such individual. Section 911(c)(1) defines the term "housing cost amount" as an amount equal to the excess of (A) the housing expenses of an individual for the taxable year to the extent such expenses do not exceed the amount determined under section 911(c)(2), over (B) 16 percent of the exclusion amount (computed on a daily

basis) in effect under section 911(b)(2)(D) for the calendar year in which such taxable year begins (\$254.52 per day for 2011, or \$92,900 for the full year), multiplied by the number of days of that taxable year within the applicable period described in section 911(d)(1). The applicable period is the period during which the individual meets the tax home requirement of section 911(d)(1) and either the *bona fide* residence requirement of section 911(d)(1)(A) or the physical presence requirement of section 911(d)(1)(B). Assuming that the entire taxable year of a qualified individual is within the applicable period, the section 911(c)(1)(B) amount for 2011 is \$14,864 (\$92,900 x .16).

Section 911(c)(2)(A) of the Code limits the housing expenses taken into account in section 911(c)(1)(A) to an amount equal to (i) 30 percent (adjusted as may be provided under the Secretary's authority under section 911(c)(2)(B)) of the amount in effect under section 911(b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by (ii) the number of days of that taxable year within the applicable period described in section 911(d)(1). Thus, under this general limitation, a qualified individual whose entire taxable year is within the applicable period

is limited to maximum housing expenses of \$27,870 (\$92,900 x .30) in 2011.

Section 911(c)(2)(B) of the Code authorizes the Secretary to issue regulations or other guidance to adjust the percentage under section 911(c)(2)(A)(i) based on geographic differences in housing costs relative to housing costs in the United States. Pursuant to this authority, the Internal Revenue Service (IRS) and the Treasury Department published Notice 2006-87, 2006-2 C.B. 766, and Notice 2007-25, 2007-1 C.B. 760, for 2006, Notice 2007-77, 2007-2 C.B. 735, for 2007, Notice 2008-107, 2008-2 C.B. 1266, for 2008 and 2009, and Notice 2010-27, for 2009 and 2010 to provide adjustments to the limitation on housing expenses for qualified individuals incurring housing expenses in countries with high housing costs relative to housing costs in the United States.

#### SECTION 3. TABLE OF ADJUSTED LIMITATIONS FOR 2011

The following table provides adjusted limitations on housing expenses (in lieu of the otherwise applicable limitation of \$27,870) for 2011.

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Angola	Luanda	230.14	84,000
Argentina	Buenos Aires	154.79	56,500
Australia	Adelaide	89.86	32,800
Australia	Brisbane	88.77	32,400
Australia	Canberra	78.08	28,500
Australia	Gold Coast	88.77	32,400
Australia	Melbourne	113.70	41,500
Australia	Oakey	88.77	32,400
Australia	Perth	121.64	44,400
Australia	Sydney	89.81	32,782
Australia	Toowoomba	88.77	32,400
Austria	Vienna	96.99	35,400
Bahamas, The	Nassau	136.16	49,700
Bahrain	All cities in Bahrain	120.55	44,000

<b>Country</b>	<b>Location</b>	<b>Limitation on Housing Expenses (daily)</b>	<b>Limitation on Housing Expenses (full year)</b>
Barbados	All cities in Barbados	103.29	37,700
Belgium	Antwerp	98.90	36,100
Belgium	Brussels	134.52	49,100
Belgium	Gosselies	121.92	44,500
Belgium	Hoogbuul	98.90	36,100
Belgium	Mons	121.92	44,500
Belgium	SHAPE/Chievres	121.92	44,500
Bermuda	Bermuda	246.58	90,000
Bosnia-Herzegovina	Sarajevo	83.84	30,600
Brazil	Brasilia	152.33	55,600
Brazil	Rio de Janeiro	96.16	35,100
Brazil	Sao Paulo	127.40	46,500
Canada	Calgary	116.44	42,500
Canada	Dartmouth	97.26	35,500
Canada	Edmonton	101.10	36,900
Canada	Halifax	97.26	35,500
Canada	London, Ontario	86.30	31,500
Canada	Montreal	164.66	60,100
Canada	Ottawa	143.56	52,400
Canada	Quebec	77.26	28,200
Canada	Toronto	140.00	51,100
Canada	Vancouver	133.97	48,900
Canada	Victoria	95.34	34,800
Canada	Winnipeg	93.97	34,300
Cayman Islands	Grand Cayman	131.51	48,000
Chile	Santiago	151.51	55,300
China	Beijing	195.07	71,200
China	Hong Kong	313.15	114,300
China	Shanghai	156.17	57,001
Colombia	Bogota	148.22	54,100
Colombia	All cities other than Bogota and Barranquilla	135.34	49,400
Costa Rica	San Jose	83.29	30,400
Denmark	Copenhagen	119.74	43,704
Dominican Republic	Santo Domingo	124.66	45,500
Ecuador	Guayaquil	84.38	30,800
Ecuador	Quito	88.77	32,400
Estonia	Tallinn	127.67	46,600
France	Garches	232.33	84,800



<b>Country</b>	<b>Location</b>	<b>Limitation on Housing Expenses (daily)</b>	<b>Limitation on Housing Expenses (full year)</b>
France	Le Havre	96.16	35,100
France	Lyon	134.25	49,000
France	Marseille	125.21	45,700
France	Montpellier	107.95	39,400
France	Paris	232.33	84,800
France	Sevres	232.33	84,800
France	Suresnes	232.33	84,800
France	Versailles	232.33	84,800
Germany	Babenhausen	113.97	41,600
Germany	Bad Aibling	97.26	35,500
Germany	Bad Nauheim	91.23	33,300
Germany	Baumholder	109.04	39,800
Germany	Berlin	139.18	50,800
Germany	Birkenfeld	109.04	39,800
Germany	Boeblingen	138.08	50,400
Germany	Bonn	115.07	42,000
Germany	Butzbach	89.04	32,500
Germany	Cologne	153.97	56,200
Germany	Darmstadt	113.97	41,600
Germany	Frankfurt am Main	118.90	43,400
Germany	Friedberg	91.23	33,300
Germany	Garmisch-Partenkirchen	103.84	37,900
Germany	Gelnhausen	143.56	52,400
Germany	Germersheim	86.03	31,400
Germany	Giebelstadt	98.36	35,900
Germany	Giessen	98.63	36,000
Germany	Grafenwoehr	112.05	40,900
Germany	Hanau	143.56	52,400
Germany	Hannover	84.93	31,000
Germany	Heidelberg	107.95	39,400
Germany	Idar-Oberstein	109.04	39,800
Germany	Ingolstadt	160.55	58,600
Germany	Kaiserslautern, Landkreis	139.45	50,900
Germany	Kitzingen	98.36	35,900
Germany	Leimen	107.95	39,400
Germany	Ludwigsburg	138.08	50,400
Germany	Mainz	153.97	56,200
Germany	Mannheim	107.95	39,400

<b>Country</b>	<b>Location</b>	<b>Limitation on Housing Expenses (daily)</b>	<b>Limitation on Housing Expenses (full year)</b>
Germany	Munich	160.55	58,600
Germany	Nellingen	138.08	50,400
Germany	Neubruecke	109.04	39,800
Germany	Ober Ramstadt	113.97	41,600
Germany	Oberammergeau	103.84	37,900
Germany	Pirmasens	139.45	50,900
Germany	Rheinau	107.95	39,400
Germany	Schwetzingen	107.95	39,400
Germany	Seckenheim	107.95	39,400
Germany	Sembach	139.45	50,900
Germany	Stuttgart	138.08	50,400
Germany	Vilseck	112.05	40,900
Germany	Wahn	115.07	42,000
Germany	Wertheim	98.36	35,900
Germany	Wiesbaden	153.97	56,200
Germany	Wuerzburg	98.36	35,900
Germany	Zweibruecken	139.45	50,900

<b>Country</b>	<b>Location</b>	<b>Limitation on Housing Expenses (daily)</b>	<b>Limitation on Housing Expenses (full year)</b>
Germany	All cities other than Augsburg, Babenhausen, Bad Aibling, Bad Kreuznach, Bad Nauheim, Baumholder, Berchtesgaden, Berlin, Birkenfeld, Boeblingen, Bonn, Bremen, Bremerhaven, Butzbach, Cologne, Darmstadt, Delmenhorst, Duesseldorf, Erlangen, Flensburg, Frankfurt am Main, Friedberg, Fuerth, Garlstedt, Garmisch-Partenkirchen, Geilenkirchen, Gelnhausen, Gernersheim, Giebelstadt, Giessen, Grafenwoehr, Grefrath, Greven, Gruenstadt, Hamburg, Hanau, Handorf, Hannover, Heidelberg, Heilbronn, Herongen, Idar-Oberstein, Ingolstadt, Kaiserslautern, Landkreis, Kalkar, Karlsruhe, Kerpen, Kitzingen, Koblenz, Leimen, Leipzig, Ludwigsburg, Mainz, Mannheim, Mayen, Moenchen-Gladbach, Muenster, Munich, Nellingen, Neubruecke, Noervenich, Nuernberg, Ober Ramstadt, Oberammergau, Osterholz-Scharmbeck, Pirmasens, Rheinau, Rheinberg, Schwabach, Schwetzingen, Seckenheim, Sembach, Stuttgart, Twisteden, Vilseck, Wahn, Wertheim, Wiesbaden, Worms, Wuerzburg, Zirndorf, and Zweibruecken	110.14	40,200
Ghana	Accra	98.63	36,000
Greece	Argyroupolis	88.77	32,400
Greece	Athens	113.97	41,600
Greece	Elefsis	113.97	41,600
Greece	Ellinikon	113.97	41,600
Greece	Mt. Hortiatis	88.77	32,400
Greece	Mt. Parnis	113.97	41,600
Greece	Mt. Pateras	113.97	41,600
Greece	Nea Makri	113.97	41,600
Greece	Perivolaki	88.77	32,400

<b>Country</b>	<b>Location</b>	<b>Limitation on Housing Expenses (daily)</b>	<b>Limitation on Housing Expenses (full year)</b>
Greece	Piraeus	113.97	41,600
Greece	Tanagra	113.97	41,600
Greece	Thessaloniki	88.77	32,400
Guatemala	Guatemala City	112.05	40,900
Guyana	Georgetown	95.89	35,000
Holy See, The	Holy See, The	154.79	56,500
Hungary	Budapest	89.04	32,500
Hungary	Papá	121.92	44,500
India	Mumbai	186.08	67,920
India	New Delhi	82.88	30,252
Indonesia	Jakarta	103.50	37,776
Ireland	Dublin	134.52	49,100
Ireland	Shannon Area	106.30	38,800
Israel	Tel Aviv	139.18	50,800
Italy	Catania	90.41	33,000
Italy	Genoa	114.52	41,800
Italy	Gioia Tauro	85.48	31,200
Italy	La Spezia	110.68	40,400
Italy	Leghorn	96.99	35,400
Italy	Milan	231.23	84,400
Italy	Naples	146.85	53,600
Italy	Parma	117.53	42,900
Italy	Pisa	96.99	35,400
Italy	Pordenone-Aviano	117.53	42,900
Italy	Rome	154.79	56,500
Italy	Sardinia	79.45	29,000
Italy	Sigonella	90.41	33,000
Italy	Turin	115.62	42,200
Italy	Vicenza	118.63	43,300
Italy	All cities other than Avellino, Brindisi, Catania, Florence, Gaeta, Genoa, Gioia Tauro, La Spezia, Leghorn, Milan, Mount Vergine, Naples, Nettuno, Parma, Pisa, Pordenone-Aviano, Rome, Sardinia, Sigonella, Turin, Verona, and Vicenza.	92.88	33,900
Jamaica	Kingston	112.88	41,200
Japan	Akashi	108.22	39,500
Japan	Akizuki	95.34	34,800

<b>Country</b>	<b>Location</b>	<b>Limitation on Housing Expenses (daily)</b>	<b>Limitation on Housing Expenses (full year)</b>
Japan	Atsugi	136.71	49,900
Japan	Camp Zama	136.71	49,900
Japan	Chiba-Ken	136.71	49,900
Japan	Fussa	136.71	49,900
Japan	Gifu	203.56	74,300
Japan	Gotemba	103.29	37,700
Japan	Haneda	136.71	49,900
Japan	Iwakuni	97.81	35,700
Japan	Kanagawa-Ken	136.71	49,900
Japan	Komaki	203.56	74,300
Japan	Machidi-Shi	136.71	49,900
Japan	Misawa	118.90	43,400
Japan	Nagoya	203.56	74,300
Japan	Okinawa Prefecture	188.49	68,800
Japan	Osaka-Kobe	248.39	90,664
Japan	Sagamihara	136.71	49,900
Japan	Saitama-Ken	136.71	49,900
Japan	Sasebo	112.05	40,900
Japan	Tachikawa	136.71	49,900
Japan	Tokyo	324.66	118,500
Japan	Tokyo-to	136.71	49,900
Japan	Yokohama	178.36	65,100
Japan	Yokosuka	163.01	59,500
Japan	Yokota	136.71	49,900
Kazakhstan	Almaty	131.51	48,000
Korea	Camp Carroll	80.82	29,500
Korea	Camp Colbern	148.49	54,200
Korea	Camp Market	148.49	54,200
Korea	Camp Mercer	148.49	54,200
Korea	K-16	148.49	54,200
Korea	Kimhae	76.44	27,900
Korea	Kimpo Airfield	148.49	54,200
Korea	Munsan	88.22	32,200
Korea	Osan AB	93.97	34,300
Korea	Pusan	76.44	27,900
Korea	Pyongtaek	89.32	32,600
Korea	Seoul	148.49	54,200
Korea	Suwon	148.49	54,200

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Korea	Taegu	89.04	32,500
Korea	Tongduchon	79.18	28,900
Korea	Uijongbu	85.21	31,100
Korea	Waegwan	80.82	29,500
Korea	All cities other than Ammo Depot #9, Camp Carroll, Camp Colbern, Camp Market, Camp Mercer, Changwon, Chinhae, Chunchon, K-16, Kimhae, Kimpo Airfield, Kunsun, Kwangju, Munsan, Osan AB, Pusan, Pyongtaek, Seoul, Suwon, Taegu, Tongduchon, Uijongbu, and Waegwan	83.01	30,300
Kuwait	Kuwait City	176.44	64,400
Kuwait	All cities other than Kuwait City	158.08	57,700
Luxembourg	Luxembourg	126.85	46,300
Macedonia	Skopje	96.99	35,400
Malaysia	Kuala Lumpur	126.58	46,200
Malaysia	All cities other than Kuala Lumpur	92.33	33,700
Malta	All cities in Malta	131.51	48,000
Mexico	Mazatlan	84.93	31,000
Mexico	Merida	103.84	37,900
Mexico	Mexico City	134.52	49,100
Mexico	Monterrey	90.96	33,200
Mexico	All cities other than Ciudad Juarez, Cuernavaca, Guadalajara, Hermosillo, Matamoros, Mazatlan, Merida, Metapa, Mexico City, Monterrey, Nogales, Nuevo Laredo, Reynosa, Tapachula, Tijuana, Tuxtla Gutierrez, and Veracruz	107.95	39,400
Micronesia	Pohnpei	77.26	28,200
Mozambique	Maputo	98.63	36,000
Namibia	Windhoek	87.95	32,100
Netherlands	Amsterdam	144.93	52,900
Netherlands	Aruba	98.63	36,000
Netherlands	Brunssum	109.04	39,800
Netherlands	Eygelshoven	109.04	39,800
Netherlands	Hague, The	184.38	67,300

<b>Country</b>	<b>Location</b>	<b>Limitation on Housing Expenses (daily)</b>	<b>Limitation on Housing Expenses (full year)</b>
Netherlands	Heerlen	109.04	39,800
Netherlands	Hoensbroek	109.04	39,800
Netherlands	Hulsberg	109.04	39,800
Netherlands	Kerkrade	109.04	39,800
Netherlands	Landgraaf	109.04	39,800
Netherlands	Maastricht	109.04	39,800
Netherlands	Papendrecht	110.96	40,500
Netherlands	Rotterdam	110.96	40,500
Netherlands	Schaesburg	109.04	39,800
Netherlands	Schinnen	109.04	39,800
Netherlands	Schiphol	144.93	52,900
Netherlands	Ypenburg	184.38	67,300
Netherlands	All locations other than Amsterdam, Aruba, Brunssum, Coevorden, Eyselshoven, The Hague, Heerlen, Hoensbroek, Hulsberg, Kerkrade, Landgraaf, Maastricht, Margraten, Papendrecht, Rotterdam, Schaesburg, Schinnen, Schiphol, and Ypenburg.	111.23	40,600
Netherlands Antilles	Curacao	125.48	45,800
New Zealand	Auckland	97.81	35,700
New Zealand	Wellington	92.60	33,800
Nicaragua	Managua	87.12	31,800
Nigeria	Abuja	98.63	36,000
Norway	Oslo	135.89	49,600
Norway	Stavanger	115.62	42,200
Norway	All cities other than Oslo and Stavanger	103.29	37,700
Panama	Panama City	97.26	35,500
Philippines	Cavite	100.00	36,500
Philippines	Manila	100.00	36,500
Philippines	All cities other than Cavite and Manila	76.44	27,900
Poland	All cities other than Krakow and Warsaw	80.55	29,400
Portugal	Alverca	141.64	51,700
Portugal	Lisbon	141.64	51,700
Qatar	Doha	99.35	36,264

<b>Country</b>	<b>Location</b>	<b>Limitation on Housing Expenses (daily)</b>	<b>Limitation on Housing Expenses (full year)</b>
Qatar	All cities other than Doha	88.77	32,400
Russia	Moscow	295.89	108,000
Russia	Saint Petersburg	164.38	60,000
Russia	Sakhalin Island	212.33	77,500
Russia	Vladivostok	212.33	77,500
Russia	Yekaterinburg	129.86	47,400
Rwanda	Kigali	86.30	31,500
Saudi Arabia	Jeddah	84.02	30,667
Saudi Arabia	Riyadh	109.59	40,000
Singapore	Singapore	183.56	67,000
South Africa	Pretoria	107.67	39,300
Spain	Barcelona	111.23	40,600
Spain	Madrid	188.77	68,900
Spain	Rota	112.05	40,900
Spain	Valencia	108.49	39,600
Spain	All cities other than Barcelona, Madrid, Rota, and Valencia	81.92	29,900
Suriname	Paramaribo	90.41	33,000
Switzerland	Bern	173.15	63,200
Switzerland	Geneva	238.90	87,200
Switzerland	Zurich	107.45	39,219
Switzerland	All cities other than Bern, Geneva, and Zurich	90.14	32,900
Taiwan	Taipei	126.54	46,188
Tanzania	Dar Es Salaam	120.55	44,000
Thailand	Bangkok	161.64	59,000
Turkey	Ankara	92.33	33,700
Turkey	Elmadag	92.33	33,700
Turkey	Izmir-Cigli	86.58	31,600
Turkey	Manzarali	92.33	33,700
Turkey	Yamanlar	86.58	31,600
Ukraine	Kiev	197.26	72,000
United Arab Emirates	Abu Dhabi	136.13	49,687
United Arab Emirates	Dubai	156.64	57,174
United Kingdom	Basingstoke	112.60	41,099
United Kingdom	Bath	112.33	41,000
United Kingdom	Bracknell	170.14	62,100
United Kingdom	Bristol	106.03	38,700
United Kingdom	Brookwood	116.44	42,500



<b>Country</b>	<b>Location</b>	<b>Limitation on Housing Expenses (daily)</b>	<b>Limitation on Housing Expenses (full year)</b>
United Kingdom	Cambridge	117.81	43,000
United Kingdom	Caversham	202.19	73,800
United Kingdom	Cheltenham	143.29	52,300
United Kingdom	Croughton	117.53	42,900
United Kingdom	Fairford	116.99	42,700
United Kingdom	Farnborough	149.86	54,700
United Kingdom	Felixstowe	113.42	41,400
United Kingdom	Gibraltar	122.24	44,616
United Kingdom	Harrogate	127.12	46,400
United Kingdom	High Wycombe	170.14	62,100
United Kingdom	Kemble	116.99	42,700
United Kingdom	Lakenheath	146.03	53,300
United Kingdom	Liverpool	106.30	38,800
United Kingdom	London	228.49	83,400
United Kingdom	Loudwater	173.97	63,500
United Kingdom	Menwith Hill	127.12	46,400
United Kingdom	Mildenhall	146.03	53,300
United Kingdom	Oxfordshire	117.53	42,900
United Kingdom	Plymouth	117.53	42,900
United Kingdom	Portsmouth	117.53	42,900
United Kingdom	Reading	170.14	62,100
United Kingdom	Rochester	122.19	44,600
United Kingdom	Southampton	121.10	44,200
United Kingdom	Surrey	132.61	48,402
United Kingdom	Waterbeach	119.73	43,700
United Kingdom	Wiltshire	113.97	41,600

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
United Kingdom	All cities other than Basingstoke, Bath, Belfast, Birmingham, Bracknell, Bristol, Brookwood, Brough, Bude, Cambridge, Caversham, Chelmsford, Cheltenham, Chicksands, Croughton, Dunstable, Edinburgh, Edzell, Fairford, Farnborough, Felixstowe, Ft. Halstead, Gibraltar, Glenrothes, Greenham Common, Harrogate, High Wycombe, Hythe, Kemble, Lakenheath, Liverpool, London, Loudwater, Menwith Hill, Mildenhall, Nottingham, Oxfordshire, Plymouth, Portsmouth, Reading, Rochester, Southampton, Surrey, Waterbeach, Welford, West Byfleet, and Wiltshire	116.44	42,500
Venezuela	Caracas	156.16	57,000
Vietnam	Hanoi	128.22	46,800
Vietnam	Ho Chi Minh City	115.07	42,000

**SECTION 4. ELECTION TO APPLY 2011 ADJUSTED LIMITATIONS TO 2010 TAXABLE YEAR**

For some locations, the limitation on housing expenses provided in section 3 of this notice may be higher than the limitation on housing expenses provided in the “Table of Adjusted Limitations for 2010” in Notice 2010–27. A qualified individual incurring housing expenses in such a location during 2010 may apply the adjusted limitation on housing expenses provided in section 3 of this notice in lieu of the amounts provided in the “Table of Adjusted Limitations for 2010” in Notice 2010–27 (and as set forth in the Instructions to Form 2555 (2010)).

Treasury and the IRS anticipate that future annual notices providing adjustments to housing expense limitations will make a similar election available to qualified individuals that incur housing expenses in the immediately preceding year. For example, when adjusted housing expense limitations

for 2012 are issued, it is expected that taxpayers will be permitted to apply those adjusted limitations to the 2011 taxable year.

**EFFECT ON OTHER DOCUMENTS**

This notice supersedes Notice 2006–87, 2006–2 C.B. 766, Notice 2007–25, 2007–1 C.B. 760, Notice 2007–77, 2007–2 C.B. 735, Notice 2008–107, 2008–2 C.B. 1265, and Notice 2010–27, 2010–15 I.R.B. 531.

**EFFECTIVE DATE**

This notice is effective for taxable years beginning on or after January 1, 2011. However, as provided in section 4, a taxpayer may elect to apply the 2011 adjusted housing limitations contained in section 3 of this notice to his or her taxable year beginning in 2010.

**DRAFTING INFORMATION**

The principal author of this notice is Susan E. Massey of the Office of Associate

Chief Counsel (International). For further information regarding this notice, contact Ms. Massey at (202) 622–3840 (not a toll-free call).

**Withholding on Wages of Nonresident Alien Employees Performing Services Within the United States**

**Notice 2011–12**

**I. PURPOSE**

This notice provides that Notice 2009–91, 2009–48 I.R.B. 717, will not apply to wages paid on or after January 1, 2011. Notice 2009–91 concerned procedures for determining the amount of income tax employers must withhold under section 3402 of the Internal Revenue Code (Code) from wages paid for services performed by nonresident alien employees within the United States.

## II. BACKGROUND

Notice 2009–91 was published to provide procedures to take account of changes made in the withholding tables to reflect the Making Work Pay Credit (section 36A of the Code). The Making Work Pay Credit does not apply to taxable years beginning after December 31, 2010. Therefore, the withholding tables for wages paid on or after January 1, 2011, will not reflect the Making Work Pay Credit, and Notice 2009–91 will not apply in determining the withholding on nonresident aliens.

Notice 1036, Early Release Copies of the 2011 Percentage Method Tables for Income Tax Withholding, explains that employers should implement the 2011 withholding tables as soon as possible, but not later than January 31, 2011.

## III. WITHHOLDING RULES THAT WILL BE IN EFFECT FOR WAGES PAID TO NONRESIDENT ALIEN EMPLOYEES ON OR AFTER JANUARY 1, 2011

For wages paid on or after January 1, 2011, employers must determine the amount of income tax to withhold from wages paid to nonresident alien employees for services performed within the United States, using the procedure explained in Notice 2005–76, 2005–2 C.B. 947, together with the tables in the revisions of Publication 15 (*Circular E*), *Employer's Tax Guide*, and Notice 1036 that are in effect when the wages are paid. This procedure is explained in Publication 15 and Notice 1036.

## IV. EFFECT ON OTHER DOCUMENTS

Notice 2009–91 has no effect for wages paid on or after January 1, 2011. Therefore, the modification to Notice 2005–76 made by Notice 2009–91 does not apply for wages paid on or after January 1, 2011. Notice 2005–76 continues in effect for wages paid on or after January 1, 2011.

## V. DRAFTING INFORMATION

The principal author of this notice is A. G. Kelley of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact A. G. Kelley at (202) 622–6040 (not a toll-free call).

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking; Notice of Public Hearing; and Withdrawal of Previously Proposed Rulemaking

### Guidance on Reporting Interest Paid to Nonresident Aliens

#### REG-146097-09

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of public hearing; and withdrawal of previously proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance on the reporting requirements for interest on deposits maintained at U.S. offices of certain financial institutions and paid to nonresident alien individuals. These proposed regulations affect persons making payments of interest with respect to such deposits. This document also provides a notice of public hearing on these proposed regulations and withdraws the notice of proposed rulemaking published on August 2, 2002 (REG-133254-02, 2002-2 C.B. 412 [67 FR 50386]).

DATES: Written or electronic comments must be received by April 7, 2011. Outlines of topics to be discussed at the public hearing scheduled for April 27, 2011, at 10 a.m. must be received by April 8, 2011. The proposed rule published on August 2, 2002 is withdrawn as of January 7, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-146097-09), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-146097-09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking

Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-146097-09). The public hearing will be held in auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kathryn Holman, (202) 622-3840; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, [Richard.A.Hurst@irscounsel.treas.gov](mailto:Richard.A.Hurst@irscounsel.treas.gov), (202) 622-7180 (not toll-free numbers).

#### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn: Desk Office for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by March 8, 2011. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance and purchase of service to provide information.

The collection of information in these proposed regulations is in §1.6049-4(b)(5)(i) and §1.6049-6(e)(4)(i) and (ii). This information is required to determine if taxpayers have properly reported amounts received as income. The collection of information is mandatory. The likely respondents are businesses and other for-profit institutions.

Estimated total annual reporting burden: 500 hours.

The estimated annual burden per respondent: 15 minutes.

Estimated number of respondents: 2,000.

Estimated annual frequency of responses: Annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books 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.

#### SUPPLEMENTARY INFORMATION:

##### Background and Explanation of Provisions

On January 17, 2001, the IRS and Treasury Department published a notice of proposed rulemaking (REG-126100-00, 2001-1 C.B. 862) in the **Federal Register** (66 FR 3925, corrected by 66 FR 15820 and 66 FR 16019) under Section 6049 (the 2001 proposed regulations), which would provide that U.S. bank deposit interest paid to any nonresident alien individual must be reported annually to the IRS. On August 2, 2002, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-133254-02) in the **Federal Register** (67 FR 50386) which withdrew these regulations and proposed narrower regulations (the 2002 regulations) that would require reporting only on interest payments to nonresident

alien individuals that are residents of certain designated countries or, at the option of the payor, on interest payments to all nonresident alien recipients of bank deposit interest. Under the 2002 regulations currently in effect, reporting of U.S. bank deposit interest is required only if the interest is paid to a U.S. person or a nonresident alien individual who is a resident of Canada. These proposed regulations withdraw the 2002 regulations and provide new proposed regulations that extend the information reporting requirement to include bank deposit interest paid to nonresident alien individuals who are residents of any foreign country.

This extension is appropriate for several reasons. First, since the 2002 proposed regulations were released, there is a growing global consensus regarding the importance of cooperative information exchange for tax purposes that has developed. Significant agreements have been reached on international standards for the exchange of information, including, for example, the understanding that information exchange will not be limited by bank secrecy or the absence of a domestic tax interest. Second, requiring routine reporting to the IRS of all U.S. bank deposit interest paid to any nonresident alien individual will further strengthen the United States exchange of information program, consistent with adequate provisions for reciprocity, usability, and confidentiality in respect of this information. Finally, this extension will help to improve voluntary compliance by U.S. taxpayers by making it more difficult to avoid the U.S. information reporting system (such as through false claims of foreign status).

In addition to requiring reporting of U.S. bank deposit interest paid to any nonresident alien individual, the proposed regulations also make the following minor changes and clarifications. Section 1.6049-6 provides that a copy of Form 1042-S, “*Foreign Person’s U.S. Source Income Subject to Withholding*”, must be furnished to the recipient for interest paid on deposits maintained at a bank’s office within the United States. Section 1.6049-6(e)(4) has been revised to clarify that the payor or middleman can satisfy this requirement by furnishing a copy of Form 1042-S either in person or to the last known address of the recipient.

### Proposed Effective Date

These regulations are proposed to apply to payments made after December 31 of the year in which they are published as final regulations in the **Federal Register**.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation.

These regulations impose a collection of information on small entities, and the Regulatory Flexibility Act (5 U.S.C. chapter 6) applies. This rule regulates commercial banks, savings institutions, credit unions, and securities brokerages. The Small Business Administration (SBA) has established size standards for types of economic activities which are classified based on the North American Industry Classification Codes (NAICS). The regulations specifying size standards are set forth in Title 13, Code of Federal Regulations, part 121 (13 CFR part 121), Small Business Size Regulations. The NAICS Code for small commercial banks, savings institutions, credit unions, and securities brokerages is specified at 13 CFR 121.201. Pursuant to subsectors 522110, 522120, and 522130 of NAICS 2007, a small commercial bank, savings institution, or credit union is one with \$175 million or less in assets. Pursuant to subsector 523120 of NAICS 2007, a small securities brokerage is one with receipts of less than \$7 million. Because this rule will affect all institutions that maintain accounts for nonresident alien individuals, this rule may affect a substantial number of small entities.

The U.S. Census Bureau American FactFinder provides data based on the 2007 Economic Census released November 24, 2009 including the number of establishments and the annual revenue of the establishments within each NAICS Code. According to this data, for Sector 52: ECO752I1: Finance and Insurance Industry Series, there were 94,192 commercial banking establishments with revenue of approximately \$609,748,098,000, 16,098 savings institutions with rev-

enue of approximately \$91,626,050,000, 17,984 credit unions with revenue of approximately \$55,521,199,000, and 30,989 NAICS Code securities brokerages with revenue of approximately \$167,337,807,000. It is estimated that approximately 25,000 commercial banks, 4,000 savings banks, and 4,000 credit unions with less than \$175,000,000 in assets, and 15,000 securities brokerages with receipts of less than \$7,000,000 that would be classified as small businesses.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. Section 605, the Chief Counsel certifies that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on all of the following. The depository accounts, the interest on which is subject to reporting under these regulations, tend to be with larger financial institutions operating in the United States, and therefore the number of small entities that will be required to undertake this collection of information is expected to be limited. Banks are already required to gather the underlying information from nonresident aliens on Form W-8, so there will be no change in the collection of information. Currently under the 2002 regulations, banks, including small financial institutions, are required to report this information to the IRS with respect to Canadian account holders. This rule would simply extend the reporting requirement to all nonresident aliens. The reporting required by this rule would be done on Form 1042 and Form 1042-S. This rule also requires that institutions prepare and deliver a statement to nonresident alien individuals to the effect that the information on the 1042 form is being furnished to the IRS and may be furnished to the government of the foreign country where the recipient resides. The amount of time required to complete the Form 1042 and Form 1042-S is brief, and the statement that is required to be collected is brief.

The IRS requests information regarding the economic impact of this rule on small commercial banks, savings institutions, credit unions, and small securities brokerages engaged in business involving payment of bank deposit interest to a nonresident alien. The IRS invites specific comments on the economic impact of compliance from members of the public who believe there will be a significant

economic impact on small businesses that are regulated by this rule. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small businesses.

### Comments and Public Hearing

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

A public hearing has been scheduled for April 27, 2011, beginning at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 8, 2011. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal author of the regulations is Kathryn Holman, Office of Associate Chief Counsel (International). However,

other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

### Withdrawal of Proposed Amendments

Accordingly, under the authority of 26 U.S.C. 7805, the proposed amendment to 26 CFR parts 1 and 31 that was published in the **Federal Register** on Friday, August 2, 2002 (67 FR 50386) is withdrawn.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are proposed to be amended as follows:

#### PART 1—INCOME TAXES

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

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

Par. 2. In §1.6049-4, paragraph (b)(5) is revised to read as follows:

*§1.6049-4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.*

\* \* \* \* \*

(b) \* \* \*

(5) *Interest payments to nonresident alien individuals—(i) General rule.* In the case of interest aggregating \$10 or more paid to a nonresident alien individual (as defined in section 7701(b)(1)(B)) that is reportable under §1.6049-8(a), the payor shall make an information return on Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding", for the calendar year in which the interest is paid. The payor or middleman shall prepare and file Form 1042-S at the time and in the manner prescribed by section 1461 and the regulations under that section and by the form and its accompanying instructions. See §§1.1461-1(b) (rules regarding the preparation of a Form 1042) and 1.6049-6(e)(4) (rules for furnishing a copy of the Form 1042-S to the payee). To determine whether an information return is required for original issue discount, see §§1.6049-5(f) and 1.6049-8(a). The Commissioner may by ruling or other administrative pronouncement prescribe

rules pursuant to a treaty or executive agreement for uniform formatting, standards for sharing information, and for usability, reciprocity, and confidentiality of taxpayer information.

(ii) *Effective/applicability date.* Paragraph (b)(5)(i) of this section shall be effective for payments made after December 31 of the year in which the final regulations are published in the **Federal Register**. (For interest paid to a Canadian nonresident alien individual on or before December 31 of the year in which final regulations are published in the **Federal Register**, see paragraph (b)(5) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2000.)

\* \* \* \* \*

Par. 3. Section 1.6049-5 is amended as follows:

1. In paragraph (b)(12) the last sentence is revised.

2. In paragraph (f) the last sentence is revised.

The revisions read as follows:

*§1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.*

\* \* \* \* \*

(b) \* \* \*

(12) \* \* \* This paragraph (b)(12) does not apply to interest paid after December 31 of the year in which the final regulations are published in the **Federal Register** to a nonresident alien individual as provided in §1.6049-8.

\* \* \* \* \*

(f) \* \* \* Original issue discount on an obligation (including an obligation with a maturity of not more than 6 months from the date of original issue) held by a nonresident alien individual or foreign corporation is interest described in paragraph (b)(1)(vi)(A) or (B) of this section and, therefore is not interest subject to reporting under section 6049 unless it is described in §1.6049-8(a) (relating to bank deposit interest paid after December 31 of the year in which the final regulations are published in the **Federal Register** to a nonresident alien individual).

\* \* \* \* \*

Par. 4. Section 1.6049-6 is amended as follows:

1. Paragraph (e)(4) is revised.

2. In paragraph (e)(5), the first sentence is revised and a new sentence is added at the end of the paragraph.

The additions and revisions read as follows:

*§1.6049-6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.*

\*\*\*\*\*

(e) \*\*\*

(4) *Special rule for amounts described in §1.6049-8(a).* In the case of amounts described in §1.6049-8(a) (relating to payments of deposit interest to nonresident alien individuals) paid after December 31 of the year in which the final regulations are published in the **Federal Register**, any person who makes a Form 1042-S, “*Foreign Person’s U.S. Source Income Subject to Withholding*”, under section 6049(a) and §1.6049-4(b)(5) shall furnish a statement to the recipient either in person or by first class mail to the recipient’s last known address. The statement shall include a copy of the Form 1042-S required to be prepared pursuant to §1.6049-4(b)(5) and a statement to the effect that the information on the form is being furnished to the United States Internal Revenue Service and may be furnished to the government of the foreign country where the recipient resides.

(5) *Effective/applicability date.* Paragraph (e)(4) of this section applies to payee statements reporting payments of deposit interest to nonresident alien individuals paid after December 31 of the year in which the final regulations are published in the **Federal Register**. \*\*\* (For interest paid to a Canadian nonresident alien individual on or before December 31 of the year in which final regulations are published in the **Federal Register**, see paragraph (e)(4) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2000.)

Par. 5. In §1.6049-8 the section heading and paragraph (a) are revised to read as follows:

*§1.6049-8 Interest and original issue discount paid to nonresidents.*

(a) *Interest subject to reporting requirement.* For purposes of §§1.6049-4, 1.6049-6, and this section and except as

provided in paragraph (b) of this section, the term interest means interest paid to a nonresident alien individual after December 31 of the year in which the final regulations are published in the **Federal Register**, where the interest is described in section 871(i)(2)(A) with respect to a deposit maintained at an office within the United States. For purposes of the regulations under section 6049, a nonresident alien individual is a person described in section 7701(b)(1)(B). The payor or middleman may rely upon a valid Form W-8BEN, “*Beneficial Owners Certificate of Foreign Status for U.S. Tax Withholding*” to determine whether the payment is made to a nonresident alien individual. Generally, amounts described in this paragraph (a) are not subject to backup withholding under section 3406. See §31.3406(g)-1(d) of this chapter. However, if the payor or middleman does not have either a valid Form W-8BEN or valid Form W-9, “*Request for Taxpayer Identification Number and Certification*”, the payor or middleman must report the payment as made to a U.S. non-exempt recipient if it must so treat the payee under the presumption rules of §1.6049-5(d)(2) and §1.1441-1(b)(3)(iii) and must also backup withhold under section 3406. (For interest paid to a Canadian nonresident alien individual on or before December 31 of the year in which final regulations are published in the **Federal Register**, see paragraph (a) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2000.)

\*\*\*\*\*

#### PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Par. 6. The authority citation for part 31 continues to read in part as follows:

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

Par. 7. In §31.3406(g)-1, paragraph (d) is revised to read as follows:

*§31.3406(g)-1 Exceptions for payments to certain payees and certain other payments.*

\*\*\*\*\*

(d) *Reportable payments made to nonresident alien individuals.* A payment of interest that is reported on Form

1042-S, “*Foreign Person’s U.S. Source Income Subject to Withholding*,” as paid to a nonresident alien individual under §1.6049-8(a) of this chapter is not subject to withholding under section 3406. (For interest paid to a Canadian nonresident alien individual on or before December 31 of the year in which final regulations are published in the **Federal Register**, see paragraph (d) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2000.)

\*\*\*\*\*

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

(Filed by the Office of the Federal Register on January 6, 2011, 8:45 a.m., and published in the issue of the Federal Register for January 7, 2011, 76 F.R. 1105)

## Notice of Proposed Rulemaking

### Rewards and Awards for Information Relating to Violations of Internal Revenue Laws

#### REG-131151-10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation relating to the payment of rewards under section 7623(a) of the Internal Revenue Code and awards under section 7623(b). The guidance is necessary to clarify the definition of proceeds of amounts collected and collected proceeds under section 7623. This regulation provides needed guidance to the general public as well as officers and employees of the IRS who review claims under section 7623.

DATES: Written or electronic comments and requests for a public hearing must be received by April 18, 2011.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-131151-10), Room 5203, Internal Revenue Service, PO

Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-131151-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS — REG-131151-10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Kirsten N. Witter, at (202) 927-0900; concerning submissions of comments and requests for a public hearing, Richard A. Hurst at [Richard.A.Hurst@irscounsel.treas.gov](mailto:Richard.A.Hurst@irscounsel.treas.gov) or (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### **Background and Explanation of Provision**

Section 7623(a) provides the Secretary with the authority to pay such sums as he deems necessary from proceeds of amounts collected based on information provided to the Secretary when the information relates to the detection of underpayments of tax or the detection and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same. Section 7623(b) provides the Secretary with the authority to pay awards to individuals if the Secretary proceeds with an administrative or judicial action described in section 7623(a) that results in collected proceeds based on information provided by the individuals. Section 301.7623-1(a) currently provides that proceeds of amounts (other than interest) collected by reason of the information provided include both amounts collected because of the information provided and amounts collected prior to receipt of the information if the information leads to the denial of a claim for refund that otherwise would have been paid. 63 Fed. Reg. 44777.

Section 301.7623-1(a) was promulgated prior to amendments of section 7623 as part of the Tax Relief and Health Care Act of 2006, division A, section 406, Public Law 109-432, 120 Stat. 2958. The amendments designated the existing

section 7623 as section 7623(a). As originally enacted, section 7623 provided that rewards shall be paid "from the proceeds of amounts (other than interest) collected by reason of the information provided . . ." The 2006 amendments to section 7623 struck the "other than interest" language. The amendments also added section 7623(b), which provides that in certain cases individuals shall receive an award of at least 15% but not more than 30% of the collected proceeds resulting from the action with which the Secretary proceeded based on information brought to the attention of the Secretary by the individual. The 2006 amendments to section 7623 also created the IRS Whistleblower Office, which is responsible for administering a whistleblower program within the IRS.

This regulation clarifies the definitions of proceeds of amounts collected and collected proceeds for purposes of section 7623 and that the provisions of Treas. Reg. §301.7623-1(a) concerning refund prevention claims are applicable to claims under section 7623(a) and (b). In clarifying the definitions of proceeds of amounts collected and collected proceeds, this regulation provides that the reduction of an overpayment credit balance is also considered proceeds of amounts collected and collected proceeds under section 7623.

##### **Special Analysis**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

##### **Comments and Requests for a Public Hearing**

Before this proposed regulation is adopted as a final regulation, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

##### **Drafting Information**

The principal author of this regulation is Kirsten N. Witter, Office of the Associate Chief Counsel (General Legal Services).

\* \* \* \* \*

##### **Proposed Amendment to the Regulations**

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

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

Section 301.7623-1 also issued under 26 U.S.C. 7623. \* \* \*

Par. 2. Section 301.7623-1 is amended by:

Revising the section heading, and paragraphs (a) and (g) to read as follows:

*§301.7623-1 Rewards and awards for information relating to violations of internal revenue laws.*

(a) *In general*—(1) *Rewards and awards*. When information that has been provided to the Internal Revenue Service results in the detection of underpayments of tax or the detection and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same, the IRS may approve a reward



under section 7623(a) in a suitable amount from the proceeds of amounts collected in cases when rewards are not otherwise provided by law, or shall determine an award under section 7623(b) from collected proceeds.

(2) *Proceeds of amounts collected and collected proceeds.* For purposes of section 7623 and this section, both proceeds of amounts collected and collected proceeds include: tax, penalties, interest, additions to tax, and additional amounts collected by reason of the information provided; amounts collected prior to receipt of the information if the information provided results in the denial of a claim for refund that otherwise would have been paid; and a reduction of an overpayment credit balance used to satisfy a tax liability incurred because of the information provided.

\* \* \* \* \*

(g) *Effective/applicability date.* This section is applicable with respect to rewards paid after January 29, 1997, except the rules of paragraph (a) of this section apply with respect to rewards and awards paid after these regulations are published as final regulations in the **Federal Register**.

Heather C. Maloy,  
(Acting) Deputy Commissioner  
for Services and Enforcement.

(Filed by the Office of the Federal Register on January 14, 2011, 8:45 a.m., and published in the issue of the Federal Register for January 18, 2010, 76 F.R. 2852)

## Notice of Proposed Rulemaking and Notice of Public Hearing

### Property Traded on an Established Market

#### REG-131947-10

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to determining when property is traded on an established

market (that is, publicly traded) for purposes of determining the issue price of a debt instrument. The regulations amend the current regulations to clarify the circumstances that cause property to be publicly traded. The regulations provide needed guidance to issuers and holders of debt instruments. This document also provides a notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by March 8, 2011. Outlines of topics to be discussed at the public hearing scheduled for April 13, 2011, at 10:00 a.m. must be received by March 4, 2011.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-131947-10), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-131947-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-131947-10).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, William E. Blanchard at (202) 622-3950; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, [Oluwafunmilayo.P.Taylor@irscounsel.treas.gov](mailto:Oluwafunmilayo.P.Taylor@irscounsel.treas.gov), at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

The issue price of a debt instrument is determined under section 1273(b) of the Internal Revenue Code or, in the case of certain debt instruments issued for property, under section 1274. Section 1273(b)(3) generally provides that in the case of a debt instrument that is issued for property and that is part of an issue some or all of which is traded on an established securities market (often referred to as "publicly traded"), the issue price of the debt instrument is the fair market value of

the debt instrument. Similarly, if the debt instrument is issued for stock or securities (or other property) that are publicly traded, the issue price of the debt instrument is the fair market value of the property. Section 1.1273-2 of the Income Tax Regulations (the "current regulations") also applies to determine the issue price of a debt instrument that is publicly traded or is issued for publicly traded property. Under §1.1273-2(c)(1), the term *property* means a debt instrument, stock, security, contract, commodity, or nonfunctional currency. Section 1.1273-2(f) defines when property is traded on an established market (that is, publicly traded) for purposes of section 1273(b)(3) and §1.1273-2.

In general, under §1.1273-2(f) of the current regulations, a debt instrument is traded on an established market if either the debt instrument or the property for which the debt instrument is exchanged is described in §1.1273-2(f)(2) through (f)(5) in the time period 30 days before or after the exchange. Property is described in §1.1273-2(f)(2) if it is listed on a specified exchange. Property is described in §1.1273-2(f)(3) if it is of a kind that is traded on a contract market designated by the Commodities Futures Trading Commission or an interbank market. Property is described in §1.1273-2(f)(4) if it appears on a system of general circulation that disseminates price quotations or recent trading prices. Property is described in §1.1273-2(f)(5) if price quotations are readily available from dealers, brokers or traders, subject to certain exceptions.

The issue price of a debt instrument has important income tax consequences. As an initial matter, the difference between the issue price of a debt instrument and its stated redemption price at maturity measures whether there is any original issue discount associated with the instrument. A debt-for-debt exchange (including a significant modification of existing debt) in the context of a work-out may result in a reduced issue price for the new debt, which generally would produce cancellation of indebtedness income for the issuer, a loss to the holder whose basis is greater than the issue price of the new debt, and original issue discount that generally must be accounted for by both the issuer and the holder of the new debt. These consequences, exacerbated by recent turmoil in the debt markets, have focused attention on

the definition of when property is traded on an established market for purposes of §1.1273-2(f).

Commenters have criticized the definition of an established market in §1.1273-2(f) of the current regulations. They argue that comparatively little debt is listed on an exchange described in §1.1273-2(f)(2), and that even debt that is listed rarely trades on the exchange. They point out that the list of foreign exchanges in §1.1273-2(f)(2)(iii) is outdated. Commenters also struggle to interpret the meaning of an interbank market in §1.1273-2(f)(3).

Even more troublesome for commenters is the question of what constitutes a quotation medium for purposes of §1.1273-2(f)(4) of the current regulations. Debt instruments typically trade in various ways in the current markets, but the vast majority of debt instruments are purchased or sold over-the-counter for a price negotiated between a financial entity (such as a securities dealer or broker) and a customer. A dealer or broker may quote a firm price, sometimes referred to as a “firm” or “executable” quote, entitling a customer to purchase or sell at that price, subject to volume limits or other specified restrictions. Alternatively, a dealer, broker or listing service may quote a price that indicates a willingness to purchase and/or sell a specified debt instrument, again subject to volume limits or other limitations, but not necessarily at the quoted price. This is sometimes referred to as a “soft” or an “indicative” quote. The decision to send a price quote to a customer (or customers) may be initiated by a dealer or broker, or a customer may request a price quote from one or more dealers or brokers. Additionally, a service provider may provide subscribers with valuations based on data collected from contributors that may reflect actual sales, price quotes, or any other information it deems relevant to the value of the debt instrument in question. Commenters struggled to apply the description of a quotation medium in §1.1273-2(f)(4) to this informal marketplace, which has evolved considerably since the regulations were originally promulgated in 1994.

Finally, commenters pointed out that the general rule in §1.1273-2(f)(5) of the current regulations, which treats a debt instrument as publicly traded if price

quotations are readily available from dealers, brokers or traders could cause almost every debt instrument to be within this definition but for the safe harbors in §1.1273-2(f)(5)(ii).

### Explanation of Provisions

As a general matter, the Treasury Department and the IRS believe that the “traded on an established market” standard established by section 1273(b)(3) is intended to be interpreted broadly. When section 1275(a)(4) was repealed by section 11325(a)(2) of the Revenue Reconciliation Act of 1990, Public Law 101-508, 104 Stat. 1388, 1388-466 (1990), issue price was required to be determined under section 1273 and section 1274 even in a debt-for-debt exchange that qualified as a corporate reorganization. As the depth of trading and the transparency of the markets that trade debt instruments has improved, the earlier concerns that trading prices may not reflect the fair market value of a debt instrument have diminished. Thus, to the extent accurate pricing information exists, whether it derives from executed sales, reliable price quotations, or valuation estimates that are based on some combination of sales and quotes, the Treasury Department and the IRS believe that that information should be the basis for the issue price determined under section 1273(b)(3).

To address concerns with the current regulations, the proposed regulations simplify and clarify the determination of when property is traded on an established market. The proposed regulations identify four ways for property to be traded on an established market. In each case, the time period for determining whether the property is publicly traded is the 31-day period ending 15 days after the issue date of the debt instrument.

First, property that is listed on an exchange continues to be publicly traded property under §1.1273-2(f)(2) of the proposed regulations. Although relatively few debt instruments are listed or traded on an exchange, the regulations may still apply to other property that is listed, such as stock for which a debt instrument is issued in a debt-for-stock exchange. The proposed regulations, however, delete the reference to an interdealer quotation system that is sponsored by a national

securities association registered under section 15A of the Securities Exchange Act of 1934 because none exist or are contemplated. Rather than list foreign exchanges, the proposed regulations specify that a foreign securities exchange that is officially recognized, sanctioned, regulated or supervised by a governmental authority of the foreign country in which the market is located is an exchange that causes property to be publicly traded.

Second, §1.1273-2(f)(3) of the proposed regulations treats property as publicly traded when a sales price for the property is reasonably available. Market participants have access to information about the securities markets from a variety of sources, which are constantly changing and evolving. If information about the sales price of a debt instrument (or information sufficient to calculate the sales price) appears in a medium that is made available to persons that regularly purchase or sell debt instruments, or persons that broker purchases or sales of debt instruments, the sales price will be considered reasonably available. For example, in the case of a debt instrument, a sale that is reported electronically at any time in the 31-day time period, such as in the Trade Reporting and Compliance Engine (“TRACE”) database maintained by the Financial Industry Regulatory Authority, would cause the instrument to be publicly traded, as would other pricing services and trading platforms that report prices of executed sales on a general basis or to subscribers.

Third, property is considered to be traded on an established market if a firm price quote to buy or sell the property is available. A firm, or executable, price quote may be labeled as such, or a price quote may function as a firm quote as a matter of law or industry practice. In either case, §1.1273-2(f)(4) of the proposed regulations treats property with a firm quote as publicly traded.

Finally, a price quote (other than a firm quote) that is provided by a dealer, a broker, or a pricing service (an indicative quote) will cause property to be publicly traded under §1.1273-2(f)(5) of the proposed regulations.

The proposed regulations provide that the fair market value of property described in §1.1273-2(f) will be presumed to be equal to its trading price, sales price, or

quoted price, whichever is applicable. However, if there is more than one price or quote, a taxpayer is permitted to reconcile competing prices or quotes in a reasonable manner. In the case of an indicative quote, if a taxpayer determines that the quoted price or prices misrepresents the fair market value of the property by a material amount, §1.1273-2(f)(6)(ii) of the proposed regulations permits the taxpayer to use any method that provides a reasonable basis to determine the fair market value of the property, provided the taxpayer can establish that the method chosen more accurately reflects the value of the property than the extant quote or quotes for the property.

In response to commenters, the proposed regulations also contain guidance in areas ancillary to publicly traded debt, such as proposed regulations clarifying and revising the rules to determine when an issue of debt instruments is eligible to be part of a qualified reopening under §1.1275-2(k) and proposed regulations clarifying the treatment of a debt instrument issued in a debt-for-debt exchange under the potentially abusive rules in section 1274(b)(3). In addition, in response to commenters, the proposed regulations include a business day convention to determine if certain stated interest payments affect whether the payments are qualified stated interest.

### Proposed Effective Date

The regulations, as proposed, apply to debt instruments that have an issue date on or after the publication date of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Public Hearing

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

A public hearing has been scheduled for April 13, 2011, beginning at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic by March 4, 2011. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

These regulations were drafted by personnel in the Office of Associate Chief Counsel (Financial Institutions and Products) and the Treasury Department.

\* \* \* \* \*

## Proposed Amendments to the Regulations

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

### PART 1—INCOME TAXES

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

Par. 2. Section 1.1273-1 is amended by adding a new paragraph (c)(6) to read as follows:

#### *§1.1273-1 Definition of OID.*

\* \* \* \* \*

(c) \* \* \*

(6) *Business day convention*—(i) *Rule.* For purposes of this paragraph (c), if a scheduled payment date for stated interest falls on a Saturday, Sunday, or Federal holiday (within the meaning of 5 U.S.C. 6103) but, under the terms of the debt instrument, the stated interest is payable on the first business day that immediately follows the scheduled payment date, the stated interest is treated as payable on the scheduled payment date, provided no additional interest is payable as a result of the deferral.

(ii) *Effective/applicability date.* Paragraph (c)(6)(i) of this section applies to debt instruments that are issued on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. A taxpayer, however, may rely on paragraph (c)(6)(i) of this section for debt instruments issued before that date.

\* \* \* \* \*

Par. 3. Section 1.1273-2 is amended by revising paragraph (f) to read as follows:

#### *§1.1273-2 Determination of issue price and issue date.*

\* \* \* \* \*

(f) *Traded on an established market (publicly traded)*—(1) *In general.* Except as provided in paragraph (f)(7) or (f)(8) of this section, property (including a debt instrument described in paragraph (b)(1) of this section) is traded on an established market for purposes of this section if, at any time during the 31-day period ending 15 days after the issue date—

(i) The property is listed on an exchange described in paragraph (f)(2) of this section;

(ii) There is a sales price for the property as described in paragraph (f)(3) of this section;

(iii) There are one or more firm quotes for the property as described in paragraph (f)(4) of this section; or

(iv) There are one or more indicative quotes for the property as described in paragraph (f)(5) of this section.

(2) *Exchange listed property.* Property is listed on an exchange for purposes of this paragraph (f)(2) if it is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);

(ii) A board of trade designated as a contract market by the Commodities Futures Trading Commission;

(iii) A foreign securities exchange that is officially recognized, sanctioned, regulated or supervised by a governmental authority of the foreign country in which the market is located; or

(iv) Any other exchange, board of trade, or other market which the Commissioner identifies in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)) as an exchange for purposes of this paragraph (f)(2).

(3) *Sales price*—(i) *In general.* A sales price exists if the price for an executed purchase or sale of the property is reasonably available.

(ii) *Pricing information for a debt instrument.* For purposes of paragraph (f)(3)(i) of this section, the price of a debt instrument is considered reasonably available if the sales price (or information sufficient to calculate the sales price) appears in a medium that is made available to persons that regularly purchase or sell debt instruments (including a price provided only to certain customers or to subscribers), or persons that broker purchases or sales of debt instruments.

(4) *Firm quote.* A firm quote is considered to exist when a price quote is available from at least one broker, dealer, or pricing service (including a price provided only to certain customers or to subscribers) for property and the quoted price is substantially the same as the price for which the property could be purchased or sold. The identity of the person providing the quote must be reasonably ascertainable for

a quote to be considered a firm quote for purposes of this paragraph (f)(4). A quote will be considered a firm quote if market participants typically purchase or sell, as the case may be, at the quoted price, even if the party providing the quote is not legally obligated to do so.

(5) *Indicative quote.* An indicative quote is considered to exist when a price quote is available from at least one broker, dealer, or pricing service (including a price provided only to certain customers or to subscribers) for property and the price quote is not a firm quote described in paragraph (f)(4) of this section.

(6) *Presumption that price or quote is equal to fair market value*—(i) *In general.* The fair market value of property described in this section will be presumed to be equal to its trading price on an exchange described in paragraph (f)(2) of this section, or its sales price or quoted price determined under paragraphs (f)(3) through (f)(5) of this section. If there is more than one trading price under paragraph (f)(2) of this section, sales price under paragraph (f)(3) of this section, or quoted price under paragraph (f)(4) or (f)(5) of this section, a taxpayer may use any reasonable method, consistently applied, to determine the price.

(ii) *Special rule for property for which there is only an indicative quote.* If property is described only in paragraph (f)(5) of this section, and the taxpayer determines that the quote (or an average of the quotes) materially misrepresents the fair market value of the property, the taxpayer can use any method that provides a reasonable basis to determine the fair market value of the property. A taxpayer must establish that the method chosen more accurately reflects the value of the property than the quote or quotes for the property to use the method provided in this paragraph (f)(6)(ii). For an equity or debt instrument, a volume discount or control premium will not be considered to create a material misrepresentation of value for purposes of this paragraph (f)(6).

(7) *Exception for property for which there is de minimis trading*—(i) *In general.* Notwithstanding any other provision in this section, property will not be treated as traded on an established market if there is no more than *de minimis* trading of the property.

(ii) *Definition of de minimis trading for debt instruments.* For purposes of paragraph (f)(7)(i) of this section, a debt instrument will be treated as traded in *de minimis* quantities only if—

(A) Each trade of such debt instrument during the 31-day period ending 15 days after the issue date is for quantities of US\$1 million or less (or, for debt denominated in a currency other than the U.S. dollar, the equivalent amount in the currency in which the debt is denominated); and

(B) The aggregate amount of all such trades does not exceed US\$5 million (or, for debt denominated in a currency other than the U.S. dollar, the equivalent amount in the currency in which the debt is denominated).

(8) *Exception for small debt issues.* Notwithstanding any other provision in this section, a debt instrument will not be treated as traded on an established market if the original stated principal amount of the issue that includes the debt instrument does not exceed US\$50 million (or, for debt denominated in a currency other than the U.S. dollar, the equivalent amount in the currency in which the debt is denominated).

(9) *Anti-abuse rules*—(i) *Effect of certain temporary restrictions on trading.* If there is any temporary restriction on trading a purpose of which is to avoid the characterization of the property as one that is traded on an established market for Federal income tax purposes, then the property is treated as traded on an established market. For purposes of the preceding sentence, a temporary restriction on trading need not be imposed by the issuer.

(ii) *Artificial pricing information.* If a principal purpose for the existence of any sale or price quotation is to materially misrepresent the value of property, that sale or price quotation may be disregarded.

(10) *Convertible debt instruments.* A debt instrument is not treated as traded on an established market solely because the debt instrument is convertible into property that is so traded.

(11) *Effective/applicability date.* Paragraph (f) of this section applies to a debt instrument issued on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

\*\*\*\*\*

Par. 4. Section 1.1274-3 is amended by adding a new paragraph (b)(4) to read as follows:

*§1.1274-3 Potentially abusive situations defined.*

\*\*\*\*\*

(b) \*\*\*

(4) *Debt-for-debt exchange*—(i) *Rule.* A debt instrument issued in a debt-for-debt exchange, including a deemed exchange under §1.1001-3, will not be treated as the subject of a recent sales transaction for purposes of section 1274(b)(3)(B)(ii)(I) even if the debt instrument exchanged for the newly issued debt instrument was recently acquired prior to the exchange. Therefore, the issue price of the debt instrument will not be determined under section 1274(b)(3). However, if the debt instrument or the property for which the debt instrument is issued is publicly traded within the meaning of §1.1273-2(f), the rules of §1.1273-2 will apply to determine the issue price of the debt instrument.

(ii) *Effective/applicability date.* Paragraph (b)(4)(i) of this section applies to a debt instrument issued on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

\*\*\*\*\*

Par. 5. Section 1.1275-2 is amended by revising paragraphs (k)(3)(ii)(A), (k)(3)(iii)(A) and (k)(5) and adding a new paragraph (k)(3)(v) to read as follows:

*§1.1275-2 Special rules relating to debt instruments.*

\*\*\*\*\*

(k) \*\*\*

(3) \*\*\*

(ii) \*\*\*

(A) The original debt instruments are publicly traded (within the meaning of §1.1273-2(f)) as of the reopening date of the additional debt instruments;

\*\*\*\*\*

(iii) \*\*\*

(A) The original debt instruments are publicly traded (within the meaning of §1.1273-2(f)) as of the reopening date of the additional debt instruments;

\*\*\*\*\*

(v) *Non-publicly traded debt issued for cash.* Notwithstanding paragraphs (k)(3)(ii)(A) and (k)(3)(iii)(A) of this section, a qualified reopening includes a reopening of original debt instruments if the additional debt instruments are issued for cash to persons unrelated to the issuer (as determined under section 267(b) or 707(b)) for an arm's length price and the other requirements in paragraph (k)(3)(ii) or (k)(3)(iii) of this section are satisfied, whichever is applicable. For purposes of paragraph (k)(3)(ii)(C) of this section, the yield test is satisfied if, on the reopening date of the additional debt instruments, the yield of the additional debt instruments (based on their cash purchase price) is not more than 110 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a *de minimis* amount of OID, the coupon rate).

\*\*\*\*\*

(5) *Effective/applicability dates*—(i) Except as provided in paragraph (k)(5)(ii) of this section, this paragraph (k) applies to debt instruments that are part of a reopening where the reopening date is on or after March 13, 2001.

(ii) Paragraph (k)(3)(v) of this section applies to debt instruments that are part of a reopening if the reopening date is on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

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

(Filed by the Office of the Federal Register on January 6, 2011, 8:45 a.m., and published in the issue of the Federal Register for January 7, 2011, 76 F.R. 1101)

## Foundations Status of Certain Organizations

### Announcement 2011-13

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption

arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

*Former Public Charities.* The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

- African American Future Society, Carrollton, GA
- After That, Inc., Lehigh Acres, FL
- Al Moreland Productions, LTD, Milwaukee, WI
- Association of Gospel Songwriters, Atlanta, GA
- Ballet Fedotov, Bradenton, FL
- Change Your Life Foundation, New Bern, NC
- Crossroads Folkloric Arts Association, Chicago, IL
- Daiscan, Inc., Union, NJ
- Dan Ashnic, Inc., Westland, MI
- Day Star Arise Production Company, Stockbridge, GA
- Eaton Youth Family Foundation, Los Angeles, CA
- Ellison's Community Outreach Center, San Bernardino, CA
- Greater Sacramento Grandparent Network, Carmichael, CA
- Hair and Hope, Dallas, TX
- Health Care Africa, Inc., New Carrollton, MD
- Help, Hope, and Life, Inc., St. Louis, MO
- Indianapolis Symphonic Winds, Indianapolis, IN
- Institute of Physical and Postural Repatterning, Los Angeles, CA
- John H Shorter Community Service and Development Corporation, Newark, NJ
- Joy in Christ Ministries, Inc., Hernando, FL
- Kingdom Economic Development, Pinellas Park, FL
- Koreatown Police Booster Association, Inc., Los Angeles, CA
- Lanihuli Hawaiian Civic Club, Laie, HI
- Living Room Theatre Company, Vanderbilt, PA
- Neighborhood Housing Services of Lake County, Waukegan, IL
- News-2-Use, Inc., Raeford, NC

Nicol's Women and Children Shelter,  
Gadsden, AL  
Oakland Box Theater, Oakland, CA  
One Group Charities, Inc., Durham, NC  
Opens Arms Daycare Center, Inc.,  
Camden, MS  
Organization for Urban and Rural Health  
and Nutritional Development Services,  
Memphis, TN  
River Cities Rollers Corporation,  
Sterling, IL  
Rotimi Foundation, Jackson, NJ  
Seeds of Greatness, Inc., Houston, TX  
Self Image, Inc., Lake Worth, FL  
(S I S) Stay in School, Inc., Chicago, IL  
Still The One, Naperville, IL  
Sutton Community Development  
Corporation, Inc., LaGrange, NC  
Waves of Glory Ministries, Inc.,  
Catasauqua, PA

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

---

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

### **Announcement 2011-15**

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 organiza-

tions described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin February 22, 2011, 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.

Acclimation Incorporated  
Stockton, CA  
At Your Service: Prestigious In-Home  
Care, Inc.  
San Antonio, TX  
Civil Liberty and Indigent Parents  
Institution and Charity  
Adams Run, SC  
Debt Serve, Inc.  
Fort Lauderdale, FL  
International Fund for Protection of  
Victims of Crimes, Inc.  
New York, NY

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

## Abbreviations

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

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

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

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

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2010–27 through 2010–52 is in Internal Revenue Bulletin 2010–52, dated December 27, 2010.



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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2010–27 through 2010–52 is in Internal Revenue Bulletin 2010–52, dated December 27, 2010.

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