

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. 9526, page 869.

Final regulations under section 367 of the Code finalize temporary and proposed regulations that apply to certain transactions involving foreign corporations in which a subsidiary corporation acquires stock of its parent corporation in exchange for property and then exchanges such acquired stock for the stock or assets of a target corporation.

EXEMPT ORGANIZATIONS

Announcement 2011-34, page 877.

The IRS has revoked its determination that Boaz Foundation of Citrus Heights, CA; California Nurses Educational Institute, Inc., of Palm Desert, CA; Caring And Sharing HFA, Inc., of Newport News, VA; Dayspring Community School of Warwick, NY; Dorough Lupus Foundation, Inc., of Ocoee, FL; Evershine Residential Services, Inc., of Owings Mills, MD; Howard D. Dorough Supporting Organization of Ocoee, FL; and Just 4 DA Kids, Inc., of La Vista, NE, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

ADMINISTRATIVE

Rev. Proc. 2011-34, page 875.

This procedure provides late election relief in certain situations for real estate professionals who failed to timely file the election to aggregate their rental real estate interests.

Finding Lists begin on page ii.



The IRS Mission

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

force the law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

Section 367.—Foreign Corporations

26 CFR 1.367(b)–10: Acquisition of parent stock or securities for property in triangular reorganizations.

T.D. 9526

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Treatment of Property Used to Acquire Parent Stock or Securities in Certain Triangular Reorganizations Involving Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 367 of the Internal Revenue Code (Code) relating to the treatment of property used to acquire parent stock or securities in certain triangular reorganizations involving foreign corporations. The regulations finalize proposed regulations and withdraw temporary regulations published on May 27, 2008 (T.D. 9400, 2008–1 C.B. 1139). The regulations affect corporations that engage in certain triangular reorganizations involving one or more foreign corporations.

DATES: *Effective Date:* These regulations are effective May 19, 2011.

Applicability Dates: For dates of applicability, see §§1.367(a)–3(g)(1)(viii) and 1.367(b)–10(e).

FOR FURTHER INFORMATION CONTACT: Robert B. Williams, Jr., (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 27, 2008, the IRS and Treasury Department published temporary and

proposed regulations under section 367(b) that apply to certain triangular reorganizations in which a subsidiary (S) purchases, in connection with the reorganization, stock of its parent corporation (P) in exchange for property, and exchanges the P stock for the stock or property of a target corporation (T), but only if P or S (or both) is a foreign corporation (the temporary regulations or proposed regulations, as applicable, and collectively, the 2008 regulations). (T.D. 9400, 2008–1 C.B. 1139 [73 FR 30301]). Because no requests to speak were received, no public hearing was held; however, comments were received. After consideration of the comments received, the IRS and Treasury Department adopt the proposed regulations as final regulations with the modifications described herein. Although the 2008 regulations were numbered under §1.367(b)–14, the final regulations are renumbered under §1.367(b)–10. The temporary regulations are withdrawn.

Summary of Comments and Explanation of Revisions

A. Scope of Regulations and Priority Rule

Section 367(a)(1) provides that if, in connection with any exchange described in section 332, 351, 354, 356, or 361, a United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain is recognized on such transfer, be considered to be a corporation. As a result, the general rule is the United States person recognizes gain (if any) on the transfer of such property, unless an exception to section 367(a)(1) applies to the transfer. Furthermore, section 367(b)(1) provides that in the case of any exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation shall be considered to be a corporation except to the extent provided in regulations. Thus, section 367(b)(1) will not apply to an exchange if gain is recognized on that exchange under section 367(a)(1).

Section 367(a)(1) (and the regulations under that section) and the 2008 regu-

lations could each potentially apply to certain triangular reorganizations. For example, section 367(a)(1) and the 2008 regulations could each potentially apply to a triangular reorganization described in section 368(a)(1)(B) if S acquires P stock for property, each of P, S, and T are foreign corporations, the T stock is held by a U.S. person, and the U.S. person realizes gain on the exchange of the T stock. See §1.367(a)–3(d)(1)(iii)(A) (providing that there is an indirect transfer by the U.S. person of the T stock to S).

The 2008 regulations include a priority rule that applies to certain transactions described in section 367(a)(1) and the 2008 regulations. The priority rule generally provides that if the amount of gain in the T stock that would otherwise be recognized under section 367(a)(1) (absent an exception) is less than the adjustment treated as a dividend under the 2008 regulations, then the 2008 regulations, and not section 367(a)(1), apply to the triangular reorganization.

One commentator noted that the priority rule applies simply based on comparing the amount of gain that would be recognized under section 367(a)(1) with the amount of the dividend that would result under the 2008 regulations, without regard to the amount of resulting U.S. tax. The commentator stated that in some cases it may be more appropriate for the priority rule to take into account the amount of resulting U.S. tax. The commentator cited, as an example, a case where P is foreign, S and T are domestic, T is owned by a U.S. person, and any dividend received by P from S under the 2008 regulations would not be subject to U.S. tax as a result of an applicable treaty. The commentator noted that if the dividend in such a case exceeds the amount of gain that would otherwise be recognized under section 367(a)(1), it may not be appropriate for the 2008 regulations to apply in lieu of section 367(a)(1) and §1.367(a)–3(c).

The IRS and Treasury Department recognize that in some cases it may be appropriate for the priority rule to take into account the amount of resulting U.S. tax. However, the IRS and Treasury Department do not believe it would be admin-

istributable to take into account the resulting U.S. tax in all cases, because this could require consideration of numerous tax attributes of various parties, including P, S, and the shareholders of T. To address this concern, the scope of the final regulations is modified such that the final regulations do not apply in two additional cases. First, the final regulations do not apply if P and S are foreign corporations and neither P nor S is a controlled foreign corporation (within the meaning of §1.367(b)-2(a)) immediately before or immediately after the triangular reorganization. Second, the final regulations do not apply if: (1) P is a foreign corporation; (2) S is a domestic corporation; (3) P's receipt of a dividend from S would not be subject to U.S. tax under either section 881 (for example, by reason of an applicable treaty) or section 882; and (4) P's stock in S is not a United States real property interest (within the meaning of section 897(c)).

In addition, the final regulations modify the scope of the 2008 regulations to include the acquisition by S, in exchange for property, of P securities that are used to acquire the stock, securities, or property of T in the triangular reorganization, but only to the extent the P securities are treated by T shareholders or securityholders as "other property" under section 356(d). The scope was expanded to include P securities because the acquisition of P securities by S for property presents the same repatriation concerns as the acquisition of P stock by S for property. Furthermore, the scope of the 2008 regulations is modified to provide that the final regulations apply to the acquisition by S, in exchange for property, of P stock to the extent such P stock is received by T shareholders or securityholders in an exchange to which section 354 or 356 applies.

Finally, the final regulations modify the priority rule contained in the 2008 regulations in three ways. First, the priority rule is modified to include exchanges of T securities as well as T stock. Second, the priority rule is modified to compare the amount of gain that would be recognized under section 367(a)(1) with not only the amount of the deemed dividend but also the amount of any gain (applying section 301(c)(1) and (3), respectively). Third, the priority rule is modified to clarify its application by providing separate priority rules in §1.367(a)-3(a) and §1.367(b)-10.

Thus, under the §1.367(a)-3(a) priority rule, as modified, if the amount of gain in the T stock or securities that would otherwise be recognized by the T shareholders or securityholders under section 367(a)(1) (without regard to any exceptions to section 367(a)(1)) is less than the sum of the amount of deemed dividend and the amount of gain (applying section 301(c)(1) and (3), respectively) under the final regulations, section 367(a)(1) does not apply to the section 354 or 356 exchange by the T shareholders or securityholders of the T stock or securities for P stock or securities. Under the §1.367(b)-10 priority rule, if the amount of gain recognized by the T shareholders or securityholders under section 367(a)(1) (taking into account any exception to section 367(a)(1) that is applied) on the section 354 or 356 exchange of T stock or securities exceeds the sum of the amount of deemed dividend and the amount of gain (applying section 301(c)(1) and (3), respectively) if the final regulations otherwise applied to the triangular reorganization, then the final regulations do not apply.

B. Application if T Is Unrelated to P or S

The 2008 regulations apply regardless of whether T is related to P or S. Some commentators asserted that the 2008 regulations should not apply if T is unrelated to P or S because there is no reduction in S's net worth (that is, S replaces its cash with an equal amount of P stock). The commentators further stated that, unlike transactions in which T is related to P or S, the consideration paid for an unrelated T is delivered outside of the P group. The commentators also noted that if T is unrelated to P and S, the transaction is distinguishable from a transaction subject to section 304, the application of which may result in a distribution even if the value of the distributing corporation is not diminished as a result of the transaction.

The IRS and Treasury Department believe that transactions in which T is unrelated to P and S present the same concerns, because S's purchase of P stock (or P securities under the final regulations) in the context of a reorganization allows for a transfer of property from S to P that has the effect of a distribution regardless of whether T is related to P or S prior to

the transaction. Accordingly, the comment was not adopted.

C. Adjustments Having the Effect of a Distribution or Contribution

If the 2008 regulations apply to a triangular reorganization, adjustments are made under section 367(b) having the effect of a distribution of property from S to P under section 301 (deemed distribution). In certain cases, the 2008 regulations similarly provide that adjustments are made under section 367(b) that have the effect of a contribution of property by P to S (deemed contribution). The 2008 regulations also provide for collateral adjustments to be made to take into account the deemed distribution and deemed contribution.

Some commentators questioned the extent to which these adjustments should be made. In response to these comments, the final regulations make clear that the adjustments are made based on a distribution or contribution of a notional amount, and therefore without the recognition of any built-in gain or loss on the distribution of such notional amount. The notional amount is equal to the amount of money transferred and liabilities assumed plus the fair market value of other property transferred, in connection with the triangular reorganization, by S in exchange for the P stock or securities used to acquire the stock, securities or property of T. In addition, the final regulations clarify that the adjustments that have the effect of a deemed distribution or deemed contribution do not affect the characterization of the actual transaction as provided under applicable tax provisions. Thus, for example, if S uses property with a built-in gain to acquire P stock from P, S's exchange of the property for P stock is not affected by the regulations. Instead, the regulations require adjustments based on a deemed distribution and deemed contribution of the notional amount that occur apart from, and in addition to, S exchanging the built-in gain property for the P stock. Accordingly, S would not recognize gain under section 311(b) with respect to the notional amount. Furthermore, S's exchange of the property would continue to be treated as an exchange subject to section 1001 in which S recognizes the built-in gain.

The 2008 regulations provide rules that address the timing of the deemed distribution resulting from the application of the general rule. The 2008 regulations contain separate timing rules for transactions involving acquisitions of P stock from P and for acquisitions of P stock from persons other than P. The IRS and Treasury Department do not believe separate timing rules are necessary. Thus, the final regulations combine the two timing rules set forth in the 2008 regulations into a single rule that applies regardless of the person from whom the P stock or securities are acquired.

The 2008 regulations also contain a special timing rule if P does not control S at the time S purchases the P stock. The final regulations retain the special timing rule contained in the 2008 regulations that applies if P does not control S at the time S purchases the P stock or securities.

E. Other Modifications

1. Definition of property

The definition of property in the 2008 regulations is modified in the final regulations to include rights (for example, options) to acquire S stock to the extent such rights are used by S to acquire P stock or securities from a person other than P.

2. Deemed contribution when S acquires P stock from P

The 2008 regulations contain a deemed contribution rule only where S acquires P stock from persons other than P. The final regulations provide a similar rule in cases where S acquires the P stock or securities from P.

3. Section 1.367(a)-3(a)

In addition to including a priority rule in §1.367(a)-3(a), the final regulations modify the format and organization of §1.367(a)-3(a). The final regulations also clarify §1.367(a)-3(a) to provide that exchanges that are subject to section 367(a)(1) (absent an applicable exception) result in the recognition of gain, as opposed to being “treated as a taxable exchange” (as is provided in the current regulations).

These final regulations apply to transactions occurring on or after May 17, 2011. For transactions that occur prior to May 17, 2011, see §1.367(b)-14T as contained in 26 CFR part 1 revised as of April 1, 2011.

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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. This certification is based on the fact that the regulations will primarily affect large multi-national corporations that engage in triangular reorganizations subject to the regulations. The regulations apply to triangular reorganizations, involving one or more foreign corporations, to the extent that, in connection with the reorganization, the acquiring corporation purchases, in exchange for property, all or a portion of the stock or securities used to acquire the stock, securities or property of the target corporation. Therefore, the IRS and Treasury Department expect only a *de minimis* number of small business entities to be subject to the regulations. Pursuant to section 7805(f) of the Code, this regulation has been 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 regulations is Robert B. Williams, Jr. of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

Paragraph 1. The authority citation for part 1 is amended by removing the entries for §§1.367(a)-3T(b)(2)(i)(C) and 1.367(b)-14T, revising the entry for §1.367(a)-3, and adding an entry for §1.367(b)-10 in numerical order to read, in part, as follows:

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

Section 1.367(a)-3 also issued under 26 U.S.C. 367(a).

Section 1.367(b)-10 also issued under 26 U.S.C. 367(b). * * *

Par. 2. Section 1.367(a)-3 is amended by revising paragraph (a), removing paragraph (g)(1)(vii), redesignating paragraph (g)(1)(viii) as paragraph (g)(1)(vii) and adding new paragraph (g)(1)(viii) to read as follows:

§1.367(a)-3 Treatment of transfers of stock or securities to foreign corporations.

(a) *In general*—(1) *Overview*. This section provides rules concerning the transfer of stock or securities by a U.S. person to a foreign corporation in an exchange described in section 367(a)(1). In general, a transfer of stock or securities (including an indirect stock transfer described in paragraph (d) of this section) by a U.S. person to a foreign corporation that is described in section 351, 354 (including a section 354 exchange pursuant to a reorganization described in section 368(a)(1)(B)), 356, or section 361(a) or (b) is subject to section 367(a)(1). Therefore, gain is recognized on such a transfer unless one of the exceptions set forth in paragraph (a)(2) of this section (regarding general exceptions for certain exchanges of stock or securities), paragraph (b) of this section (regarding transfers of foreign stock or securities), paragraph (c) of this section (regarding transfers of domestic stock or securities), or paragraph (e) of this section (regarding transfers of stock or securities in a section 361 exchange) applies to the transfer. For rules applicable when, pursuant to section 304(a)(1), a U.S. person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation in exchange for stock of such foreign corporation in a transaction to which section 351(a) applies, see §1.367(a)-9T.

(2) *Exceptions for certain exchanges of stock or securities*. Unless otherwise

provided, the following exchanges are not subject to section 367(a)(1) and therefore gain is not recognized under section 367(a)(1).

(i) *Section 368(a)(1)(E) reorganizations.* In an exchange under section 354 or 356, a U.S. person exchanges stock or securities of a foreign corporation in a reorganization described in section 368(a)(1)(E).

(ii) *Certain section 368(a)(1) asset reorganizations.* In an exchange under section 354 or 356, a U.S. person exchanges stock or securities of a domestic or foreign corporation pursuant to an asset reorganization that is not treated as an indirect stock transfer under paragraph (d) of this section. See paragraph (d)(3) *Example 16* of this section. For purposes of this section, an *asset reorganization* is defined as a reorganization described in section 368(a)(1) involving a transfer of property under section 361.

(iii) *Certain reorganizations described in sections 368(a)(1)(A) and (a)(2)(E).* If, in an exchange described in section 361, a domestic merging corporation transfers stock of a controlling corporation to a foreign surviving corporation in a reorganization described in section 368(a)(1)(A) and (a)(2)(E), the stock of the controlling corporation transferred in such section 361 exchange is not subject to section 367(a)(1) if the stock of the controlling corporation is provided to the merging corporation by the controlling corporation pursuant to the plan of reorganization. However, a section 361 exchange of other property, including stock of the controlling corporation not provided by the controlling corporation pursuant to the plan of reorganization, by the domestic merging corporation to the foreign surviving corporation pursuant to such a reorganization is described in section 367(a)(1) and therefore subject to section 367(a)(1) unless an exception to section 367(a)(1) applies.

(iv) *Certain triangular reorganizations described in §1.367(b)-10.* If, in an exchange under section 354 or 356, one or more U.S. persons exchange stock or securities of T (as defined in §1.358-6(b)(1)(iii)) in connection with a transaction described in §1.367(b)-10 (applying to certain acquisitions of parent stock or securities for property in triangular reorganizations), section 367(a)(1) shall not apply to such U.S. persons with

respect to the exchange of the stock or securities of T if the condition specified in this paragraph (iv) is satisfied. The condition specified in this paragraph (iv) is that the amount of gain in the T stock or securities that would otherwise be recognized under section 367(a)(1) (without regard to any exceptions thereto) pursuant to the indirect stock transfer rules of paragraph (d) of this section is less than the sum of the amount of the deemed distribution under §1.367(b)-10 treated as a dividend under section 301(c)(1) and the amount of such deemed distribution treated as gain from the sale or exchange of property under section 301(c)(3). See §1.367(b)-10(a)(2)(iii) (providing a similar rule that excludes certain transactions from the application of §1.367(b)-10).

(3) *Cross-references.* For rules regarding other indirect or constructive transfers of stock or securities subject to section 367(a)(1) (unless an exception applies) see §1.367(a)-1T(c). For additional rules regarding a transfer of stock or securities in an exchange described in section 361(a) or (b), see section 367(a)(5) and any regulations under that section. For special basis and holding period rules involving foreign corporations that are parties to certain triangular reorganizations under section 368(a)(1), see §1.367(b)-13. For additional rules relating to certain nonrecognition exchanges involving a foreign corporation, see section 367(b) and the regulations under that section. For rules regarding reporting requirements with respect to transfers described under section 367(a), see section 6038B and the regulations thereunder. For rules related to expatriated entities, see section 7874 and the regulations thereunder.

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(g) * * *
(1) * * *

(viii) Paragraph (a)(2)(iv) of this section applies to exchanges occurring on or after May 17, 2011. For exchanges that occur prior to May 17, 2011, see §1.367(a)-3T(b)(2)(i)(C) as contained in 26 CFR part 1 revised as of April 1, 2011.

* * * * *

§1.367(a)-3T [Removed]

Par. 3. Section 1.367(a)-3T is removed.

Par. 4. Section 1.367(b)-0 is amended by:

1. Revising the introductory text.
2. Removing the entry for §1.367(b)-2(d)(3)(ii), and redesignating the entries for §1.367(b)-2(d)(3)(iii), (d)(3)(iii)(A), and (d)(3)(iii)(B) as §1.367(b)-2(d)(3)(ii), (d)(3)(ii)(A), and (d)(3)(ii)(B) respectively.
3. Revising the entry for §1.367(b)-4(b)(1)(i), redesignating the entry for §1.367(b)-4(b)(1)(ii) as the entry for §1.367(b)-4(b)(1)(iii), and adding a new entry for §1.367(b)-4(b)(1)(ii).
4. Revising the entries for §1.367(b)-4(d)(1) and (2), and removing the entry for §1.367(b)-4(d)(3).
5. Adding entries for §1.367(b)-10.
6. Adding entries for §1.367(b)-13.

The revisions and additions read as follows:

§1.367(b)-0 Table of contents.

This section lists the paragraphs contained in §§1.367(b)-1 through 1.367(b)-13.

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§1.367(b)-4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

- * * * * *
- (b) * * *
 - (1) * * *
 - (i) General rule.
 - (ii) Exception.

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- (d) * * *
- (1) Rule.
- (2) Example.

§1.367(b)-10 Acquisition of parent stock or securities for property in triangular reorganizations.

- (a) In general.
 - (1) Scope.
 - (2) Exceptions.
 - (3) Definitions.
- (b) General rules.
 - (1) Deemed distribution.
 - (2) Deemed contribution.
 - (3) Timing of deemed distribution and deemed contribution.
 - (4) Application of other provisions.

- (5) Example.
- (c) Collateral adjustments.
- (1) Deemed distribution.
- (2) Deemed contribution.
- (d) Anti-abuse rule.
- (e) Effective/applicability date.

§1.367(b)–13 Special rules for determining basis and holding period.

- (a) Scope and definitions.
 - (1) Scope.
 - (2) Definitions.
- (b) Determination of basis for exchanges of foreign stock or securities under section 354 or 356.
- (c) Determination of basis and holding period for triangular reorganizations.
 - (1) Application.
 - (2) Basis and holding period rules.
 - (i) Portions attributable to S stock.
 - (ii) Portions attributable to T stock.
 - (d) Special rules applicable to divided shares of stock.
 - (1) In general.
 - (2) Pre-exchange earnings and profits.
 - (3) Post-exchange earnings and profits.
 - (e) Examples.
 - (f) Effective date.

Par. 5. Section 1.367(b)–10 is added to read as follows:

§1.367(b)–10 Acquisition of parent stock or securities for property in triangular reorganizations.

- (a) *In general*—(1) *Scope*. Except as provided in paragraphs (a)(2)(i) through (iii) of this section, this section applies to a triangular reorganization if P or S (or both) is a foreign corporation and, in connection with the reorganization, S acquires in exchange for property all or a portion of the P stock or P securities (P acquisition) that are used to acquire the stock, securities or property of T in the triangular reorganization. This section applies to a triangular reorganization regardless of whether P controls (within the meaning of section 368(c)) S at the time of the P acquisition.
- (2) *Exceptions*. This section shall not apply if —
 - (i) P and S are foreign corporations and neither P nor S is a controlled foreign corporation (within the meaning of §1.367(b)–2(a)) immediately before or immediately after the triangular reorganization;

(ii) S is a domestic corporation, P’s stock in S is not a United States real property interest (within the meaning of section 897(c)), and P would not be subject to U.S. tax on a dividend (as determined under section 301(c)(1)) from S under either section 881 (for example, by reason of an applicable treaty) or section 882; or

(iii) In an exchange under section 354 or 356, one or more U.S. persons exchange stock or securities of T and the amount of gain in the T stock or securities recognized by such U.S. persons under section 367(a)(1) is equal to or greater than the sum of the amount of the deemed distribution that would be treated by P as a dividend under section 301(c)(1) and the amount of such deemed distribution that would be treated by P as gain from the sale or exchange of property under section 301(c)(3) if this section would otherwise apply to the triangular reorganization. See §1.367(a)–3(a)(2)(iv) (providing a similar rule that excludes certain transactions from the application of section 367(a)(1)).

(3) *Definitions*. For purposes of this section, the following definitions apply:

(i) The terms *P*, *S*, and *T* have the meanings set forth in §1.358–6(b)(1)(i), (ii), and (iii), respectively.

(ii) The term *property* has the meaning set forth in section 317(a), except that the term *property* also includes —

(A) A liability assumed by S to acquire the P stock or securities; and

(B) S stock (or any rights to acquire S stock) to the extent such S stock (or rights to acquire S stock) is used by S to acquire P stock or securities from a person other than P.

(iii) The term *security* means an instrument that constitutes a security for purposes of section 354 or 356.

(iv) The term *triangular reorganization* has the meaning set forth in §1.358–6(b)(2).

(b) *General rules*—(1) *Deemed distribution*. If this section applies, adjustments shall be made that have the effect of a distribution of property (with no built-in gain or loss) from S to P under section 301 (deemed distribution). The amount of the deemed distribution shall equal the sum of the amount of money transferred by S, the amount of any liabilities that are assumed by S and constitute property, and the fair market value of other property transferred by S in the P acquisition in exchange for

the P stock or P securities described in paragraph (i) or (ii), respectively, of this paragraph (b)(1)—

(i) P stock received by T shareholders or securityholders in an exchange to which section 354 or 356 applies.

(ii) P securities received by T shareholders or securityholders to the extent such securities are “other property” (within the meaning of section 356(d)).

(2) *Deemed contribution*. If this section applies, adjustments shall be made that have the effect of a contribution of property (with no built-in gain or loss) by P to S in an amount equal to the amount of the deemed distribution from S to P under paragraph (b)(1) of this section (deemed contribution).

(3) *Timing of deemed distribution and deemed contribution*. If P controls (within the meaning of section 368(c)) S at the time of the P acquisition, the adjustments described in paragraphs (b)(1) and (2) of this section shall be made as if the deemed distribution and deemed contribution, respectively, are separate transactions occurring immediately before the P acquisition. If P does not control (within the meaning of section 368(c)) S at the time of the P acquisition, the adjustments described in paragraphs (b)(1) and (2) of this section shall be made as if the deemed distribution and deemed contribution, respectively, are separate transactions occurring immediately after P acquires control of S, but prior to the triangular reorganization.

(4) *Application of other provisions*. Nothing in this section shall prevent the application of other provisions of the Internal Revenue Code from applying to the P acquisition. For example, section 304 may apply to the P acquisition. Furthermore, section 1001 or 267 may apply to S’s transfer of property to acquire P stock or securities from P or a person other than P. In addition, generally applicable provisions that apply to triangular reorganizations, such as §1.358–6 and §1.1032–2, shall apply to the triangular reorganization in a manner consistent with S acquiring the P stock or securities in exchange for property from P or a person other than P, as the case may be.

(5) *Example*. The rules of this paragraph (b) are illustrated by the following example:

(i) *Facts*. P, a publicly traded domestic corporation, owns all of the outstanding stock of FS, a foreign corporation, and all of the outstanding stock of US1, a domestic corporation that is a member of the

P consolidated group. US1 owns all of the outstanding stock of FT, a foreign corporation, the fair market value of which is \$100x. US1's basis in the FT stock is \$100x, such that there is a no built-in gain or loss in the FT stock. FS has earnings and profits in excess of \$100x. FS purchases \$100x of P stock from the public on the open market in exchange for \$100x of cash. Pursuant to foreign law, FT merges with and into FS in a triangular reorganization that qualifies under section 368(a)(1)(A) by reason of section 368(a)(2)(D). In an exchange to which section 354 applies, US1 exchanges all the outstanding stock of FT for the \$100x of P stock purchased by FS on the open market.

(ii) *Analysis.* The triangular reorganization is described in paragraph (a)(1) of this section. P is a domestic corporation and FS is a foreign corporation. In connection with FS purchasing the \$100x of P stock in exchange for property (cash), FS uses the P stock to acquire the FT property in a triangular reorganization, and US1 receives the P stock in an exchange to which section 354 applies. Furthermore, none of the exceptions of paragraphs (a)(2)(i) through (iii) of this section apply. Therefore, pursuant to paragraph (b)(1) of this section, adjustments are made that have the effect of a deemed distribution of property (with no built-in gain or loss) in the amount of \$100x from FS to P under section 301. Pursuant to paragraph (b)(2) of this section, adjustments are made that have the effect of a deemed contribution of property (with no built-in gain or loss) in the amount of \$100x by P to FS. Pursuant to paragraph (b)(3) of this section, the adjustments described in paragraphs (b)(1) and (2) of this section are made as if the deemed distribution and deemed contribution, respectively, are separate transactions occurring immediately before FS's purchase of the P stock on the open market. Generally applicable provisions apply to FS's purchase of the P stock on the open market (see, for example, section 304) and in determining certain tax consequences to P and FS as a result of the triangular reorganization (see, for example, §1.358-6(d) and §1.1032-2(c)).

(c) *Collateral adjustments.* This paragraph (c) provides additional rules that apply by reason of the deemed distribution and deemed contribution described in paragraphs (b)(1) and (b)(2), respectively, of this section.

(1) *Deemed distribution.* A deemed distribution described in paragraph (b)(1)

of this section shall be treated as occurring for all purposes of the Internal Revenue Code. Thus, for example, the ordering rules of section 301(c) apply to characterize the deemed distribution to P as a dividend from the earnings and profits of S, return of stock basis, or gain from the sale or exchange of property, as the case may be. Furthermore, sections 902 or 959 may apply to the deemed distribution if S is a foreign corporation, and sections 881, 882, 897, 1442, or 1445 may apply to the deemed distribution if S is a domestic corporation. Appropriate corresponding adjustments shall be made to S's earnings and profits consistent with the principles of section 312.

(2) *Deemed contribution.* A deemed contribution described in paragraph (b)(2) of this section shall be treated as occurring for all purposes of the Internal Revenue Code. Thus, for example, appropriate adjustments shall be made to P's basis in the S stock.

(d) *Anti-abuse rule.* Appropriate adjustments shall be made pursuant to this section if, in connection with a triangular reorganization, a transaction is engaged in with a view to avoid the purpose of this section. For example, if S is created, organized, or funded to avoid the application of this section with respect to the earnings and profits of a corporation related (within the meaning of section 267(b)) to P or S, the earnings and profits of S will be deemed to include the earnings and profits of such related corporation for purposes of determining the consequences of the adjustments provided in this section, and appropriate corresponding adjustments will be made to account for the application of this section to the earnings and profits of such related corporation.

(e) *Effective/applicability date.* This section applies to triangular reorganizations occurring on or after May 17, 2011. For triangular reorganizations that occur prior to May 17, 2011, see §1.367(b)-14T as contained in 26 CFR part 1 revised as of April 1, 2011.

§1.367(b)-14T [Removed]

Par. 6. Section 1.367(b)-14T is removed.

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

Approved May 11, 2011.

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

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Section 7805.—Rules and Regulations

26 CFR 301.9100-1: Extensions of time to make elections.

A revenue procedure provides guidance under § 1.469-9(g) of the Income Tax Regulations allowing certain taxpayers to make late elections to treat all interests in rental real estate as a single rental real estate activity. See Rev. Proc. 2011-34, page 875.

26 CFR 301.9100-3: Other extensions.

A revenue procedure provides guidance under § 1.469-9(g) of the Income Tax Regulations allowing certain taxpayers to make late elections to treat all interests in rental real estate as a single rental real estate activity. See Rev. Proc. 2011-34, page 875.

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 469, 1.469-9(g): Rules for certain rental real estate activities.

(Also: Part I, §§ 301.9100-1, 301.9100.3.)

Rev. Proc. 2011-34

SECTION 1. PURPOSE

This revenue procedure provides guidance under § 1.469-9(g) of the Income Tax Regulations allowing certain taxpayers to make late elections to treat all interests in rental real estate as a single rental real estate activity.

SECTION 2. BACKGROUND

.01 Section 469 of the Internal Revenue Code generally imposes restrictions on the allowance of passive activity losses and credits in the case of individuals and certain other taxpayers.

.02 Under § 469(c)(2), the term “passive activity” generally includes any rental activity. Section 469(c)(7) provides a limited exception to this rule for taxpayers in a real property business. Specifically, § 469(c)(7)(A) provides that if a taxpayer meets the requirements of § 469(c)(7)(B), the taxpayer’s rental real estate activity will no longer be presumptively passive. In general, § 469(c)(7)(A) provides that a taxpayer’s interests in rental real estate are treated as separate activities for determining whether the taxpayer materially participates in each rental real estate activity unless the taxpayer elects to treat all of the taxpayer’s interests in rental real estate as a single rental real estate activity.

.03 Section 1.469-9(g)(1) provides that a qualifying taxpayer may make an election to treat all of the taxpayer’s interests in rental real estate as a single rental real estate activity.

.04 Section 1.469-9(g)(3) provides that a qualifying taxpayer makes the election to treat all interests in rental real estate as a single rental real estate activity by filing a statement with the taxpayer’s original income tax return for the taxable year. Section 1.469-9(g)(3) describes the information that must be contained in the statement.

.05 Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election,

or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “regulatory election” as including an election whose deadline is prescribed by a regulation published in the Internal Revenue Bulletin.

.06 Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make an election.

.07 Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

.08 Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

.09 Section 301.9100-3(b)(1) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer meets one of the requirements in § 301.9100-3(b)(1)(i)-(v), which include that the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make the election.

SECTION 3. SCOPE

.01 This revenue procedure provides special procedures for relief for late § 1.469-9(g) elections.

.02 The procedures in this revenue procedure are in lieu of the letter ruling procedure that is used to obtain relief for a late § 1.469-9(g) election. Accordingly, user fees do not apply to corrective action under this revenue procedure.

.03 A taxpayer that is not eligible for relief under this revenue procedure may request relief by applying for a private letter ruling. The Service will not ordinarily issue a private letter ruling under § 1.469-9(g) if the period of limitations

on assessment under § 6501(a) has lapsed for any taxable year that would be affected by the requested late election. Rev. Proc. 2011-1, 2011-1 I.R.B. 1 (or its successor) prescribes the procedural requirements for requesting a private letter ruling.

SECTION 4. APPLICATION

.01 *Eligibility for relief.* A taxpayer is eligible for an extension of time to file a § 1.469-9(g) election under Section 4.03 of this revenue procedure if the taxpayer represents on a statement that satisfies the procedural requirements of section 4.02 of this section and under penalties of perjury that it meets all of the following requirements:

(1) the taxpayer failed to make an election under § 1.469-9(g) solely because the taxpayer failed to timely meet the requirements in § 1.469-9(g);

(2) the taxpayer filed consistently with having made an election under § 1.469-9(g) on any return that would have been affected if the taxpayer had timely made the election. The taxpayer must have filed all required federal income tax returns consistent with the requested aggregation for all of the years including and following the year the taxpayer intends the requested aggregation to be effective and no tax returns containing positions inconsistent with the requested aggregation may have been filed by or with respect to the taxpayer during any of the taxable years;

(3) the taxpayer timely filed each return that would have been affected by the election if it had been timely made. The taxpayer will be treated as having timely filed a required tax or information return if the return is filed within 6 months after its due date, excluding extensions;

(4) the taxpayer has reasonable cause for its failure to meet the requirements in § 1.469-9(g).

.02 *Procedural requirements for requesting relief.* The taxpayer must attach the statement required by § 1.469-9(g)(3) to an amended return for the most recent tax year and mail the amended return to the IRS service center where the taxpayer will file its current year tax return. The statement must contain the declaration required by § 1.469-9(g)(3), must

explain the reason for the failure to file a timely election, and must include the representations required in section 4.01 of this revenue procedure. The statement must identify the taxable year for which it seeks to make the late election. Finally, the statement must state at the top of the document "FILED PURSUANT TO REV. PROC. 2011-34."

The declaration and representations required in sections 4.01 and 4.02 of this revenue procedure must be accompanied by a dated declaration, signed by the taxpayer which states: "Under penalties of perjury I (we) declare that I (we) have examined this election, including any accompanying documents, and, to the best of my (our) knowledge and belief, the election contains all the relevant facts relating to the election, and such facts are true, correct, and complete." The individual or individuals who sign must have personal knowledge of the facts and circumstances related to the election.

.03 Relief for late election under § 1.469-9(g). The Service will notify the taxpayer upon receipt of a completed application requesting relief under this revenue procedure that satisfies the procedural requirements under section 4.02 of this revenue procedure. Any taxpayer receiving relief under this revenue procedure is treated as having made a timely election to treat all interests in rental real estate as a single rental real estate activity as of the taxable year for which the late election was requested.

SECTION 5. AREAS NOT COVERED BY THIS REVENUE PROCEDURE

The granting of an extension of time to file an election under § 1.469-9(g) pursuant to this revenue procedure and the issuance of a notification described

in section 4.03 do not constitute an express or implied determination concerning whether the taxpayer satisfies the eligibility requirements under section 4.01 of this revenue procedure, whether the taxpayer satisfies the requirements under § 469(c)(7)(B), or whether the taxpayer materially participates in any activity.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective on the date of publication of this revenue procedure in the Internal Revenue Bulletin. This revenue procedure also applies to all ruling requests pending in the national office on June 13, 2011, and to requests for relief received thereafter. The national office will decline to rule on all ruling requests currently pending as of June 13, 2011, and will refund the user fee.

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2194.

The collection of information in this revenue procedure is in Section 4.02 of this revenue procedure. The information will help the IRS to determine whether a taxpayer has met the requirements of Section 4 of this revenue procedure and whether a taxpayer has reasonable cause for failing to make a timely election. The collection of information is required to make a late election pursuant to this revenue procedure. The information will be reported on a statement filed by the taxpayer with the applicable IRS Service Center. The time

needed to complete and file the statement will vary depending on individual circumstances. The estimated burden for taxpayers filing the statement is included in the estimates shown in the Paperwork Reduction Act of the annually published letter ruling revenue procedure.

The estimated total annual reporting burden for the taxable years in which this revenue procedure applies is **1,000** hours.

The estimated annual burden per respondent for the taxable years in which this revenue procedure applies varies from **15** minutes to **45** minutes, depending on individual circumstances, with an estimated average burden of **30** minutes. The estimated annual number of respondents for the taxable years in which this revenue procedure applies is **2000**.

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

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.

SECTION 8. DRAFTING INFORMATION

The principal authors of this revenue procedure are Michala P. Irons and Bryan A. Rimmke of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Ms. Irons or Mr. Rimmke at (202) 622-3050 (not a toll-free call).

Part IV. Items of General Interest

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

Announcement 2011-34

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

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section

170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on June 13, 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.

Boaz Foundation
Citrus Heights, CA
California Nurses Educational Institute,
Inc.
Palm Desert, CA
Caring And Sharing HFA, INC.
Newport News, VA
Dayspring Community School
Warwick, NY
Dorough Lupus Foundation, Inc.
Ocoee, FL
Evershine Residential Services, Inc.
Owings Mills, MD
Howard D. Dorough Supporting
Organization
Ocoee, FL
Just 4 DA Kids, Inc.
La Vista, NE

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

Numerical Finding List¹

Bulletin 2011–1 through 2011–24

Announcements:

2011-1, 2011-2 I.R.B. 304
2011-2, 2011-3 I.R.B. 324
2011-3, 2011-3 I.R.B. 324
2011-4, 2011-4 I.R.B. 424
2011-5, 2011-4 I.R.B. 430
2011-6, 2011-4 I.R.B. 433
2011-7, 2011-5 I.R.B. 446
2011-8, 2011-5 I.R.B. 446
2011-9, 2011-7 I.R.B. 499
2011-10, 2011-7 I.R.B. 499
2011-11, 2011-7 I.R.B. 500
2011-12, 2011-9 I.R.B. 532
2011-13, 2011-8 I.R.B. 525
2011-14, 2011-9 I.R.B. 532
2011-15, 2011-8 I.R.B. 526
2011-16, 2011-7 I.R.B. 500
2011-17, 2011-9 I.R.B. 532
2011-18, 2011-12 I.R.B. 567
2011-19, 2011-11 I.R.B. 553
2011-20, 2011-10 I.R.B. 542
2011-21, 2011-12 I.R.B. 567
2011-22, 2011-16 I.R.B. 672
2011-23, 2011-12 I.R.B. 568
2011-24, 2011-12 I.R.B. 569
2011-25, 2011-14 I.R.B. 608
2011-26, 2011-14 I.R.B. 608
2011-27, 2011-15 I.R.B. 651
2011-28, 2011-18 I.R.B. 748
2011-29, 2011-18 I.R.B. 748
2011-30, 2011-20 I.R.B. 791
2011-31, 2011-22 I.R.B. 836
2011-32, 2011-22 I.R.B. 836
2011-34, 2011-24 I.R.B. 877

Notices:

2011-1, 2011-2 I.R.B. 259
2011-2, 2011-2 I.R.B. 260
2011-3, 2011-2 I.R.B. 263
2011-4, 2011-2 I.R.B. 282
2011-5, 2011-3 I.R.B. 314
2011-6, 2011-3 I.R.B. 315
2011-7, 2011-5 I.R.B. 437
2011-8, 2011-8 I.R.B. 503
2011-9, 2011-6 I.R.B. 459
2011-10, 2011-6 I.R.B. 463
2011-11, 2011-7 I.R.B. 497
2011-12, 2011-8 I.R.B. 514
2011-13, 2011-9 I.R.B. 529
2011-14, 2011-11 I.R.B. 544
2011-15, 2011-10 I.R.B. 539
2011-16, 2011-17 I.R.B. 720

Notices— Continued:

2011-17, 2011-10 I.R.B. 540
2011-18, 2011-11 I.R.B. 549
2011-19, 2011-11 I.R.B. 550
2011-20, 2011-16 I.R.B. 652
2011-21, 2011-19 I.R.B. 761
2011-22, 2011-12 I.R.B. 557
2011-23, 2011-13 I.R.B. 588
2011-24, 2011-14 I.R.B. 603
2011-25, 2011-14 I.R.B. 604
2011-26, 2011-17 I.R.B. 720
2011-27, 2011-17 I.R.B. 723
2011-28, 2011-16 I.R.B. 656
2011-29, 2011-16 I.R.B. 663
2011-30, 2011-17 I.R.B. 724
2011-31, 2011-17 I.R.B. 724
2011-32, 2011-18 I.R.B. 737
2011-33, 2011-19 I.R.B. 761
2011-34, 2011-19 I.R.B. 765
2011-36, 2011-21 I.R.B. 792
2011-37, 2011-20 I.R.B. 785
2011-38, 2011-20 I.R.B. 785
2011-39, 2011-20 I.R.B. 786
2011-40, 2011-22 I.R.B. 806
2011-41, 2011-21 I.R.B. 798
2011-42, 2011-23 I.R.B. 866

Proposed Regulations:

REG-140108-08, 2011-13 I.R.B. 591
REG-149335-08, 2011-6 I.R.B. 468
REG-118761-09, 2011-21 I.R.B. 803
REG-146097-09, 2011-8 I.R.B. 516
REG-153338-09, 2011-14 I.R.B. 606
REG-154159-09, 2011-19 I.R.B. 777
REG-124018-10, 2011-2 I.R.B. 301
REG-131151-10, 2011-8 I.R.B. 519
REG-131947-10, 2011-8 I.R.B. 521
REG-132724-10, 2011-7 I.R.B. 498
REG-151687-10, 2011-23 I.R.B. 867

Revenue Procedures:

2011-1, 2011-1 I.R.B. 1
2011-2, 2011-1 I.R.B. 90
2011-3, 2011-1 I.R.B. 111
2011-4, 2011-1 I.R.B. 123
2011-5, 2011-1 I.R.B. 167
2011-6, 2011-1 I.R.B. 195
2011-7, 2011-1 I.R.B. 233
2011-8, 2011-1 I.R.B. 237
2011-9, 2011-2 I.R.B. 283
2011-10, 2011-2 I.R.B. 294
2011-11, 2011-4 I.R.B. 329
2011-12, 2011-2 I.R.B. 297
2011-13, 2011-3 I.R.B. 318
2011-14, 2011-4 I.R.B. 330
2011-15, 2011-3 I.R.B. 322

Revenue Procedures— Continued:

2011-16, 2011-5 I.R.B. 440
2011-17, 2011-5 I.R.B. 441
2011-18, 2011-5 I.R.B. 443
2011-19, 2011-6 I.R.B. 465
2011-20, 2011-11 I.R.B. 551
2011-21, 2011-12 I.R.B. 560
2011-22, 2011-18 I.R.B. 737
2011-23, 2011-15 I.R.B. 626
2011-24, 2011-20 I.R.B. 787
2011-25, 2011-17 I.R.B. 725
2011-26, 2011-16 I.R.B. 664
2011-27, 2011-18 I.R.B. 740
2011-28, 2011-18 I.R.B. 743
2011-29, 2011-18 I.R.B. 746
2011-30, 2011-21 I.R.B. 802
2011-31, 2011-22 I.R.B. 808
2011-32, 2010-22 I.R.B. 835
2011-34, 2011-24 I.R.B. 875

Revenue Rulings:

2011-1, 2011-2 I.R.B. 251
2011-2, 2011-2 I.R.B. 256
2011-3, 2011-4 I.R.B. 326
2011-4, 2011-6 I.R.B. 448
2011-5, 2011-13 I.R.B. 577
2011-6, 2011-10 I.R.B. 537
2011-7, 2011-10 I.R.B. 534
2011-8, 2011-12 I.R.B. 554
2011-9, 2011-12 I.R.B. 554
2011-10, 2011-14 I.R.B. 597
2011-11, 2011-19 I.R.B. 758
2011-13, 2011-23 I.R.B. 841

Treasury Decisions:

9507, 2011-3 I.R.B. 305
9508, 2011-7 I.R.B. 495
9509, 2011-6 I.R.B. 450
9510, 2011-6 I.R.B. 453
9511, 2011-6 I.R.B. 455
9512, 2011-7 I.R.B. 473
9513, 2011-8 I.R.B. 501
9514, 2011-9 I.R.B. 527
9515, 2011-14 I.R.B. 599
9516, 2011-13 I.R.B. 575
9517, 2011-15 I.R.B. 610
9518, 2011-17 I.R.B. 710
9519, 2011-18 I.R.B. 734
9520, 2011-18 I.R.B. 730
9521, 2011-19 I.R.B. 750
9522, 2011-20 I.R.B. 780
9523, 2011-20 I.R.B. 781
9524, 2011-23 I.R.B. 843
9525, 2011-23 I.R.B. 837
9526, 2011-24 I.R.B. 869

¹ 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.

Finding List of Current Actions on Previously Published Items¹

Bulletin 2011–1 through 2011–24

Announcements:

85-88

Obsoleted by
Rev. Proc. 2011-10, 2011-2 I.R.B. 294

2008-11

Modified by
Ann. 2011-6, 2011-4 I.R.B. 433

2009-62

Obsoleted by
Rev. Proc. 2011-10, 2011-2 I.R.B. 294

Notices:

2006-87

Superseded by
Notice 2011-8, 2011-8 I.R.B. 503

2007-25

Superseded by
Notice 2011-8, 2011-8 I.R.B. 503

2007-77

Superseded by
Notice 2011-8, 2011-8 I.R.B. 503

2008-107

Superseded by
Notice 2011-8, 2011-8 I.R.B. 503

2009-23

Modified by
Notice 2011-24, 2011-14 I.R.B. 603

2009-24

Modified by
Notice 2011-24, 2011-14 I.R.B. 603

2009-83

Modified by
Notice 2011-25, 2011-14 I.R.B. 604

2009-93

Modified by
Notice 2011-38, 2011-20 I.R.B. 785

2010-27

Superseded by
Notice 2011-8, 2011-8 I.R.B. 503

2010-32

Modified and superseded by
Notice 2011-37, 2011-20 I.R.B. 785

2010-59

Modified by
Notice 2011-5, 2011-3 I.R.B. 314

Notices— Continued:

2010-60

Supplemented and superseded by
Notice 2011-34, 2011-19 I.R.B. 765

2010-71

Modified and superseded by
Notice 2011-9, 2011-6 I.R.B. 459

2010-79

Clarified and modified by
Notice 2011-4, 2011-2 I.R.B. 282

Proposed Regulations:

REG-132554-08

Corrected by
Ann. 2011-11, 2011-7 I.R.B. 500

REG-149335-08

Hearing scheduled by
Ann. 2011-26, 2011-14 I.R.B. 608

REG-146097-09

Hearing rescheduled by
Ann. 2011-30, 2011-20 I.R.B. 791

Revenue Procedures:

72-50

Modified and superseded by
Rev. Proc. 2011-10, 2011-2 I.R.B. 294

76-34

Modified and superseded by
Rev. Proc. 2011-10, 2011-2 I.R.B. 294

83-23

Modified and superseded by
Rev. Proc. 2011-15, 2011-3 I.R.B. 322

94-17

Modified and superseded by
Rev. Proc. 2011-15, 2011-3 I.R.B. 322

97-27

Clarified and modified by
Rev. Proc. 2011-14, 2011-4 I.R.B. 330

2001-10

Modified by
Rev. Proc. 2011-14, 2011-4 I.R.B. 330

2002-28

Modified by
Rev. Proc. 2011-14, 2011-4 I.R.B. 330

2003-21

Modified and superseded by
Rev. Proc. 2011-15, 2011-3 I.R.B. 322

2004-34

Modified by
Rev. Proc. 2011-14, 2011-4 I.R.B. 330
Modified and clarified by
Rev. Proc. 2011-18, 2011-5 I.R.B. 443

Revenue Procedures— Continued:

2006-44

Modified by
Ann. 2011-6, 2011-4 I.R.B. 433

2006-56

Modified by
Rev. Proc. 2011-14, 2011-4 I.R.B. 330

2008-52

Modified by
Notice 2011-4, 2011-2 I.R.B. 282
Rev. Proc. 2011-17, 2011-5 I.R.B. 441
Superseded in part by
Rev. Proc. 2011-14, 2011-4 I.R.B. 330

2009-39

Superseded in part by
Rev. Proc. 2011-14, 2011-4 I.R.B. 330

2009-44

Modified by
Ann. 2011-6, 2011-4 I.R.B. 433

2010-1

Superseded by
Rev. Proc. 2011-1, 2011-1 I.R.B. 1

2010-2

Superseded by
Rev. Proc. 2011-2, 2011-1 I.R.B. 90

2010-3

Superseded by
Rev. Proc. 2011-3, 2011-1 I.R.B. 111

2010-4

Superseded by
Rev. Proc. 2011-4, 2011-1 I.R.B. 123

2010-5

Superseded by
Rev. Proc. 2011-5, 2011-1 I.R.B. 167

2010-6

Superseded by
Rev. Proc. 2011-6, 2011-1 I.R.B. 195

2010-7

Superseded by
Rev. Proc. 2011-7, 2011-1 I.R.B. 233

2010-8

Superseded by
Rev. Proc. 2011-8, 2011-1 I.R.B. 237

2010-9

Superseded by
Rev. Proc. 2011-9, 2011-2 I.R.B. 283

2010-15

Updated by
Rev. Proc. 2011-13, 2011-3 I.R.B. 318

¹ 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.

Revenue Procedures— Continued:

2010-18

Amplified and modified by
Rev. Proc. 2011-21, 2011-12 I.R.B. 560

2010-25

Obsoleted in part by
Rev. Proc. 2011-23, 2011-15 I.R.B. 626

2011-1

Corrected by
Ann. 2011-7, 2011-5 I.R.B. 446

2011-8

Corrected by
Ann. 2011-8, 2011-5 I.R.B. 446

2011-11

Corrected by
Ann. 2011-9, 2011-7 I.R.B. 499

2011-14

Modified by
Rev. Proc. 2011-27, 2011-18 I.R.B. 740
Rev. Proc. 2011-28, 2011-18 I.R.B. 743
Modified and amplified by
Rev. Proc. 2011-22, 2011-18 I.R.B. 737

2011-21

Amplified by
Rev. Proc. 2011-26, 2011-16 I.R.B. 664

Revenue Rulings:

81-100

Modified by
Rev. Rul. 2011-1, 2011-2 I.R.B. 251

2004-67

Modified by
Rev. Rul. 2011-1, 2011-2 I.R.B. 251

2008-40

Modified by
Rev. Rul. 2011-1, 2011-2 I.R.B. 251

2011-3

Corrected by
Ann. 2011-16, 2011-7 I.R.B. 500

Treasury Decisions:

9391

Corrected by
Ann. 2011-12, 2011-9 I.R.B. 532

9505

Corrected by
Ann. 2011-10, 2011-7 I.R.B. 499



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