

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

Notice 2011-45, page 886.

This notice informs tax practitioners that until all of the conditions for becoming a registered tax return preparer are able to be satisfied, no individual may represent that he or she is a registered tax return preparer. This notice also informs tax practitioners that registered tax return preparers will be required to add a specified statement to all mediums of paid advertising and broadcasting.

Rev. Proc. 2011-35, page 890.

This procedure provides survey guidelines and estimation procedures to be used for determining basis in stock acquired in transferred basis transactions. This procedure updates and expands Rev. Proc. 81-70, while at the same time it obsoletes Rev. Proc. 81-70 and Notice 2009-4 with respect to transferred basis transactions completed on or after June 20, 2011. Rev. Proc. 81-70 and Notice 2009-4 obsoleted in part.

EXEMPT ORGANIZATIONS

Rev. Proc. 2011-33, page 887.

This procedure provides the extent to which grantors and contributors (including donors) may rely on the listing of an organization in Publication 78, *Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code*, or on the IRS Business Master File ("BMF") extract, for purposes of deducting contributions under section 170 of the Code and making grants under sections 4942, 4945, and 4966. In addition, this revenue procedure clarifies that the Internal Revenue Service ("IRS") may give notice of revocation, including revo-

cations under section 6033(j), through an appropriate public announcement, such as publication in the Internal Revenue Bulletin or on the IRS's website at *IRS.gov*. Finally, this revenue procedure advises that the IRS will no longer publish a paper version of Publication 78. Rev. Proc. 82-39 and 2009-32 modified and superseded.

Announcement 2011-35, page 916.

The Internal Revenue Service will publish a list of organizations that have had their federal tax-exempt status automatically revoked for failing to file an annual return or notice for three consecutive years on *IRS.gov*.

EMPLOYMENT TAX

Notice 2011-35, page 879.

The Affordable Care Act added new sections 4375, 4376, 4377, and 9511 to the Code. This notice requests public comments on the implementation of these new sections, which impose fees to be paid by issuers of health insurance policies and self-insured health plan sponsors. Comments are requested by September 6, 2011.

EXCISE TAX

Notice 2011-35, page 879.

The Affordable Care Act added new sections 4375, 4376, 4377, and 9511 to the Code. This notice requests public comments on the implementation of these new sections, which impose fees to be paid by issuers of health insurance policies and self-insured health plan sponsors. Comments are requested by September 6, 2011.

(Continued on the next page)

Finding Lists begin on page ii.



Notice 2011-46, page 887.

This notice defers the date to June 10, 2011, by which a covered entity must submit an error report and defers the date to August 24, 2011, by which the IRS will send covered entities their 2011 final fee calculation and, if applicable, notification of the final determination with respect to error reports. Notice 2011-9 and Rev. Proc. 2011-24 modified.

ADMINISTRATIVE

Notice 2011-43, page 882.

This notice provides transitional relief for certain small organizations that have lost their tax-exempt status because they failed to file an annual electronic notice for taxable years beginning in 2007, 2008 and 2009. This notice describes what criteria a small organization must satisfy to qualify for the transitional relief and explains how qualifying organizations can apply for reinstatement of tax-exempt status and request retroactive reinstatement.

Notice 2011-44, page 883.

This notice provides guidance with respect to applying for reinstatement of tax-exempt status and requesting retroactive reinstatement and establishing reasonable cause under section 6033(j)(2) and (3) of the Code for an organization that has had its tax-exempt status automatically revoked under section 6033(j)(1).

Notice 2011-45, page 886.

This notice informs tax practitioners that until all of the conditions for becoming a registered tax return preparer are able to be satisfied, no individual may represent that he or she is a registered tax return preparer. This notice also informs tax practitioners that registered tax return preparers will be required to add a specified statement to all mediums of paid advertising and broadcasting.

Rev. Proc. 2011-36, page 915.

This procedure provides a reduced user fee for applications for reinstatement of tax-exempt status filed by small organization that lost their tax-exempt status under section 6033(j) and qualify for the transitional relief described in Notice 2011-43. Rev. Proc. 2011-8 modified.

The IRS Mission

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

force the law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

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

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

Section 351.—Transfer to Corporation Controlled by Transferor

26 CFR 1.351-3: Basis to transferee corporations.

This revenue procedure provides rules for satisfying the reporting requirements of § 1.351-3 for taxpayers acquiring stock in transferred basis transactions. See Rev. Proc. 2011-35, page 890, Section 5.

Section 358.—Basis to Distributees

26 CFR 1.358-6: Stock basis in certain triangular reorganizations.

This revenue procedure provides survey guidelines and estimation procedures to be used for determining basis in stock acquired in certain triangular reorganizations. See Rev. Proc. 2011-35, page 890.

Section 362.—Basis to Corporations

26 CFR 1.362-1: Basis to corporations.

This revenue procedure provides survey guidelines and estimation procedures to be used for determining basis in stock acquired in transferred basis transactions. See Rev. Proc. 2011-35, page 890.

Section 368.—Definitions Relating to Corporate Reorganizations

26 CFR 1.368-3: Basis to transferee corporations.

This revenue procedure provides rules for satisfying the reporting requirements of § 1.368-3 for taxpayers acquiring stock in transferred basis transactions. See Rev. Proc. 2011-35, page 890, Section 5.

Section 4376.—Self-Insured Health Plans

The Affordable Care Act added new sections 4375, 4376, 4377, and 9511 to the Code. This notice re-

quests public comments on the implementation of these new sections, which impose fees to be paid by issuers of health insurance policies and self-insured health plan sponsors. See Notice 2011-35, page 879.

Section 4377.—Definitions and Special Rules

The Affordable Care Act added new sections 4375, 4376, 4377, and 9511 to the Code. This notice requests public comments on the implementation of these new sections, which impose fees to be paid by issuers of health insurance policies and self-insured health plans sponsors. See Notice 2011-35, page 879.

Section 9511.—Patient-Centered Outcomes Research Trust Fund

The Affordable Care Act added new sections 4375, 4376, 4377, and 9511 to the Code. This notice requests public comments on the implementation of these new sections, which impose fees to be paid by issuers of health insurance policies and self-insured health plans sponsors. See Notice 2011-35, page 879.

Part III. Administrative, Procedural, and Miscellaneous

Request for Comments on Funding of Patient-Centered Outcomes Research Through Fees Payable by Issuers of Health Insurance Policies and Self-Insured Health Plan Sponsors

Notice 2011–35

Section 1. PURPOSE

This notice requests public comments on the implementation of provisions of the Patient Protection and Affordable Care Act, P.L. 111–148, (Affordable Care Act) to fund comparative clinical effectiveness research relating to patient-centered outcomes. The Affordable Care Act includes provisions that promote research to evaluate and compare health outcomes and the clinical effectiveness, risks, and benefits of medical treatments, services, procedures, drugs, and other strategies or items that treat, manage, diagnose, or prevent illness or injury.

As required by the Affordable Care Act, a nonprofit corporation — the Patient-Centered Outcomes Research Institute (Institute) — was established to assist patients, clinicians, purchasers, and policy-makers in making informed health decisions by advancing comparative clinical effectiveness research. The Affordable Care Act provides that the Institute will not be an agency or establishment of the United States Government, and will be funded by a Patient-Centered Outcomes Research Trust Fund (Trust Fund). The Trust Fund, in turn, is to be funded in part by fees to be paid by issuers of health insurance policies and sponsors of self-insured health plans.

The Department of the Treasury (Treasury) and the Internal Revenue Service (Service) intend to publish proposed regulations implementing and providing guidance on the statutory requirements applicable to issuers and plan sponsors that pay those fees. To inform the development of the proposed regulations, this notice invites comments on how the fees should be determined and paid, including comments on several possible rules, safe harbors, and issues outlined below. Accordingly, while

this notice does not provide guidance, it describes potential guidance that Treasury and the Service expect to propose to implement the new fees and seeks comments on this potential guidance.

Section 2. BACKGROUND

.01 Section 6301 of the Affordable Care Act added new § 9511 to the Internal Revenue Code (Code) to establish the Patient-Centered Outcomes Research Trust Fund as a funding source for the Patient-Centered Outcomes Research Institute. The Trust Fund, in turn, will be funded in part through fees payable by issuers of health insurance policies and sponsors of self-insured health plans. Section 6301 of the Affordable Care Act also added new §§ 4375, 4376, and 4377 to the Code to impose those fees on what the statute refers to as “specified health insurance policies” and “applicable self-insured health plans” based on the average number of lives covered under the policy or plan. The fees are effective for policy and plan years ending after September 30, 2012.

Fees on Specified Health Insurance Policies Under § 4375

.02 Section 4375(a) imposes a fee on each specified health insurance policy for each policy year ending after September 30, 2012. Therefore, the first policy year to which the fee on a specified health insurance policy applies would be a policy year that ends on October 1, 2012. The fee does not apply to policy years ending after September 30, 2019. Accordingly, if the policy year were the calendar year, the fee would apply to calendar policy years 2012 through 2018.

.03 The fee under § 4375 is equal to two dollars (one dollar in the case of policy years ending before October 1, 2013) multiplied by the average number of lives covered under the policy. Under § 4375(b), the fee must be paid by the issuer of the policy.

.04 Section 4375(c) defines “specified health insurance policy” as any accident or health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States. The term also includes an arrangement under which fixed payments or pre-

miums are received as consideration for a person’s agreement to provide or arrange for the provision of accident or health coverage to residents of the United States, regardless of how such coverage is provided or arranged to be provided. In such a case, the person agreeing to provide or arrange for the provision of coverage is treated as the issuer. “Specified health insurance policy” does not include any insurance if substantially all of its coverage is of excepted benefits described in § 9832(c).

.05 Section 4375(d) provides that, for any policy year ending in any fiscal year beginning after September 30, 2014, the dollar amount in effect under § 4375(a) is equal to the sum of (1) the dollar amount for policy years ending in the previous fiscal year, plus (2) the amount equal to the product of (A) the dollar amount for policy years ending in the previous fiscal year, and (B) the percentage increase in the projected *per capita* amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year. For purposes of § 4375, the term “fiscal year” means the Federal government’s fiscal year, which runs from October 1 to September 30. Because Treasury does not publish the National Health Expenditures, Treasury and the Service intend that the proposed regulations will refer to the National Health Expenditures published by the Department of Health and Human Services.

Fees on Applicable Self-Insured Health Plans Under § 4376

.06 Section 4376(a) imposes a fee on any applicable self-insured health plan for each plan year ending after September 30, 2012. Therefore, the first plan year to which the fee on an applicable self-insured health plan applies would be a plan year that ends on October 1, 2012. The fee does not apply to plan years ending after September 30, 2019. Accordingly, if the plan year were the calendar year, the fee would apply to calendar plan years 2012 through 2018. The fee is equal to two dollars (one dollar in the case of plan years ending before October 1, 2013) multiplied by the average number of lives covered under the plan.

.07 Under § 4376(b)(1), the fee must be paid by the plan sponsor. Section 4376(b)(2) defines “plan sponsor” as the employer in the case of a plan established or maintained by a single employer or the employee organization in the case of a plan established or maintained by an employee organization. Section 4376(b)(2) provides that, in the case of (1) a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, (2) a multiple employer welfare arrangement, or (3) a voluntary employees’ beneficiary association described in § 501(c)(9), the “plan sponsor” is the association, committee, joint board of trustees, or other similar group of representatives of the parties that establish or maintain the plan, and, in the case of a plan established or maintained by a cooperative or association described in § 4376(c)(2)(F), the “plan sponsor” is the cooperative or association.

.08 Section 4376(c) defines “applicable self-insured health plan” as any plan for providing accident or health coverage if any portion of the coverage is provided other than through an insurance policy, and the plan is established or maintained (1) by one or more employers for the benefit of their employees or former employees, (2) by one or more employee organizations for the benefit of their members or former members, (3) jointly by one or more employers and one or more employee organizations for the benefit of employees or former employees, (4) by a voluntary employees’ beneficiary association described in § 501(c)(9), (5) by any organization described in § 501(c)(6), or (6) in the case of a plan not previously described, by a multiple employer welfare arrangement (as defined in § 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA)), a rural electric cooperative (as defined in § 3(40)(B)(iv) of ERISA), or a rural telephone cooperative association (as defined in § 3(40)(B)(v) of ERISA).

.09 Section 4376(d) provides that, for any plan year ending in any fiscal year beginning after September 30, 2014, the dollar amount in effect under § 4376(a) is equal to the sum of (1) that dollar amount for plan years ending in the previous fiscal year, plus (2) an amount equal to (A) that dollar amount for plan years ending in the previous fiscal year, multiplied by (B) the percentage increase in the projected *per*

capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year. For purposes of § 4376, the term “fiscal year” means the Federal government’s fiscal year, which, as noted, runs from October 1 to September 30. As noted, because Treasury does not publish National Health Expenditures, Treasury and the Service intend that the proposed regulations will refer to the National Health Expenditures published by the Department of Health and Human Services.

Definitions and Special Rules Under § 4377 for the Fees Imposed Under §§ 4375 and 4376

.10 Section 4377(a)(1) defines “accident and health coverage” for purposes of §§ 4375 and 4376 as any coverage that, if provided by an insurance policy, would cause the policy to be a specified health insurance policy (as defined in § 4375(c)).

.11 Section 4377(a)(2) defines “insurance policy” as any policy or other instrument whereby a contract of insurance is issued, renewed, or extended.

.12 Section 4377(a)(3) defines “United States” to include any possession of the United States. Section 4377(d) provides that no amount collected under §§ 4375–4377 is to be covered over to any possession of the United States.

.13 Governmental entities that are issuers of specified health insurance policies or plan sponsors of applicable self-insured plans are generally subject to the fees imposed under §§ 4375 and 4376. However, § 4377(b) provides that no such fee will be imposed on any covered life under an “exempt governmental program.” Section 4377(b) defines “exempt governmental program” as (A) any insurance program established under title XVIII of the Social Security Act (42 U.S.C. 1395 *et seq.*) (Medicare), (B) the medical assistance program established by title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*) (Medicaid) or title XXI of the Social Security Act (42 U.S.C. 1397aa *et seq.*) (Children’s Health Insurance Program), (C) any program established by Federal law for providing medical care (other than through insurance policies) to individuals (or their spouses and dependents) by reason of the individuals being members of the Armed Forces of the United States or

veterans, and (D) any program established by Federal law for providing medical care (other than through insurance policies) to members of Indian tribes (as defined in § 4(d) of the Indian Health Care Improvement Act, 25 U.S.C. 1603).

.14 Section 4377(c) provides that, for purposes of subtitle F of the Code, the fees imposed by §§ 4375 and 4376 are treated as if they were taxes.

Data Reported on the NAIC Supplemental Health Care Exhibit

.15 State insurance departments currently require issuers operating in their jurisdictions to provide a primary financial report referred to as an Annual Statement. The format of the Annual Statement and the rules to be followed in preparing it are established by the National Association of Insurance Commissioners (NAIC). After the Affordable Care Act was enacted, the NAIC developed a Supplemental Health Care Exhibit (Exhibit) for the purpose of collecting comprehensive major medical data by company, state, and market. Information collected on the Exhibit includes the number of individual policies (for individual and association business) or certificates issued to individuals covered under a group policy in force as of the end of the reporting period and the total number of lives insured, including dependents, under individual policies and group certificates as of the end of the reporting period. Many issuers of specified health insurance policies are required by one or more state insurance commissioners to file the Exhibit.

Section 3. REQUEST FOR COMMENTS

Treasury and the Service anticipate proposing regulations under §§ 4375 and 4376. To inform the development of the proposed regulations, Treasury and the Service request comments on the following topics:

Average Number of Lives Covered Under the Policy Under § 4375

.01 The fee imposed by § 4375(a) on specified health insurance policies is based on the “average number of lives covered under the policy.” Treasury and the Service invite comments on reasonable methods an issuer may use to determine the av-

erage number of lives covered under the policy for purposes of § 4375. Under any such method other than the safe harbor described below, it is contemplated that issuers that are required to file the NAIC Supplemental Health Care Exhibit would be expected to be able to account for any differences between the numbers computed under the alternative method and the data reported on the Exhibit.

.02 Treasury and the Service also invite comments on whether guidance should provide a safe harbor for issuers that are required to report the number of lives covered on the NAIC Supplemental Health Care Exhibit. For example, a safe harbor might provide that the Service will not challenge an issuer's calculation of the fee based on the number of lives reported on the most recently filed Exhibit, or based on the average of the number of lives reported on the most recently filed Exhibit and the Exhibit filed one year before the most recently filed Exhibit. Comments are requested on the scope and operation of a safe harbor rule, including comments on the circumstances, if any, under which amounts so determined may be too unrepresentative to form a sufficiently reliable basis for calculating the fee.

Applicable Self-Insured Health Plan Under § 4376

.03 Under § 4376(c), an applicable self-insured health plan is a plan that provides "accident and health coverage" any portion of which is provided other than through an insurance policy and that meets certain other conditions. Section 4377(a)(1) defines "accident and health coverage" as any coverage that, if provided by an insurance policy, would cause the policy to be a specified health insurance policy (as defined in § 4375(c)). Section 4375(c)(2) provides that a specified health insurance policy does not include any insurance if substantially all of its coverage is of excepted benefits described in § 9832(c). Benefits provided under a health flexible spending arrangement (health FSA), as described in § 106(c)(2), are excepted benefits for purposes of § 9832(c) if:

1. Other group health plan coverage, not limited to excepted benefits, is made available to the eligible class of participants; and

2. The arrangement is structured so that the maximum benefit payable to any eligible participant cannot exceed two times the participant's salary reduction election (or, if greater, \$500 plus the amount of the salary reduction election).

See § 54.9831-1(c)(3)(v) of the regulations relating to group health plans. Because coverage under a health FSA that satisfies these requirements is treated as excepted benefits for purposes of § 9832(c), such coverage would not, if provided by an insurance policy, cause the policy to be a "specified insurance policy," as defined in § 4375(c). Accordingly, the coverage under a health FSA that satisfies these requirements is not "accident and health coverage" within the meaning of § 4377(a)(1), and such a health FSA is not an "applicable self-insured health plan" within the meaning of § 4376(c).

With respect to health FSAs that do not satisfy the requirements to be treated as an excepted benefit, comments are invited on the variations that exist and which types would be excluded from the definition of an applicable self-insured health plan under § 4376 because they provide a type of coverage that, if provided by an insurance policy, would not be treated as a specified health insurance policy (as defined in § 4375(c)).

.04 Treasury and the Service invite comments on the type or types of health reimbursement arrangements (HRAs), as described in Notice 2002-45, 2002-2 C.B. 93, that would be excluded from the definition of applicable self-insured health plan under § 4376 because they provide a type of coverage that, if provided by an insurance policy, would not cause the policy to be treated as a specified health insurance policy (as defined in § 4375(c)). If so, what would be the basis for reaching such a conclusion? For example, to what extent does a limitation on annual contributions, or the availability of other employer-sponsored health coverage affect the determination as to whether an HRA provides coverage that, if provided by an insurance policy, would not cause the policy to be treated as a specified health insurance policy? Comments are also invited on whether there are types of HRAs that should be

treated as applicable self-insured health plans under § 4376.

Average Number of Lives Covered Per Applicable Self-Insured Health Plan Under § 4376

.05 The fee imposed by § 4376(a) on applicable self-insured health plans is based on the "average number of lives covered under the plan." Treasury and the Service invite comments on how future guidance could reduce administrative burden by providing for reasonable methods to determine the average number of lives covered under an applicable self-insured plan; on whether guidance should provide a safe harbor that would permit sponsors of applicable self-insured health plans to compute the average number of lives covered using a formula based on the number of participants and one or more additional factors that account for the number of dependents without requiring that actual dependents covered under the plan be counted; and on formulas and factors that could be used to determine the number of dependents for applicable self-insured health plans.

Administration of the Fees

.06 Under § 4377(c), the fees imposed by §§ 4375 and 4376 are treated as taxes for purposes of subtitle F of the Code (§§ 6001-7874). Thus, references in subtitle F to "taxes imposed by this title," "internal revenue tax," and similar references are also references to the fees imposed by §§ 4375 and 4376. For example, the fees imposed by §§ 4375 and 4376 are assessed (§ 6201), collected (§ 6301), enforced (§ 7602), and subject to confidentiality rules (§ 6103), in the same manner as taxes imposed by other sections of the Code.

.07 The deficiency procedures of §§ 6211-6216 apply only to income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44. The fees imposed by §§ 4375 and 4376 are imposed by chapter 34 and, therefore, the deficiency procedures of §§ 6211-6216 do not apply to those fees.

.08 Future proposed regulations could require each issuer and plan sponsor to report and pay the §§ 4375 and 4376 fees annually as opposed to quarterly. Proposed

regulations might also require the reporting and payment to occur on the same calendar date regardless of the “policy year” or “plan year” of any individual issuer or plan sponsor. Comments are invited on this approach and possible alternatives.

Other Issues That Should be Addressed in Guidance

.09 In addition to comments on the topics described above, comments are invited on the following specific issues:

1. What transition rules, if any, would be appropriate for the first “policy year” or first “plan year” ending after September 30, 2012? For example, would any of the information necessary to determine the average number of lives covered be unavailable for the first year for which the fee is in effect?
2. Is guidance needed concerning the definition of “policy year” or “plan year” for purposes of §§ 4375 and 4376? If so, how should these terms be defined?
3. Are there circumstances under which an issuer or plan sponsor might not know whether a covered individual resides in the United States? If so, how should those circumstances be addressed? Is guidance needed on the application of §§ 4375 and 4376 to plans that cover expatriates?
4. Should future guidance permit all employers treated as a single employer under § 414 to be treated as a single employer for purposes of § 4376(b)? If so, under what conditions?
5. In the case of the fee imposed on self-insured health plans, what guidance is needed concerning the ability of a third-party administrator to act on behalf of a plan sponsor in complying with the § 4376 fee requirements?

.10 Comments will be considered if submitted in writing by September 6, 2011. All comments will be available for public inspection and copying. Comments may be submitted in one of three ways:

1. By mail to CC:PA:LPD:PR (Notice 2011–35), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

2. Electronically to *Notice.Comments@irs.counsel.treas.gov*. Please include “Notice 2011–35” in the subject line of any electronic communications.
3. By hand-delivery Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2011–35), Courier’s Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224.

DRAFTING INFORMATION

The principal author of this notice is Rebecca L. Baxter of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Ms. Baxter at (202) 622–7117 (not a toll-free call).

Transitional Relief Under Internal Revenue Code § 6033(j) for Small Organizations

Notice 2011–43

This notice provides transitional relief for certain small organizations that have lost their tax-exempt status because they failed to file a required annual electronic notice (Form 990–N e-Postcard) for taxable years beginning in 2007, 2008 and 2009. A small organization — that is, one that normally has annual gross receipts of not more than \$50,000 in its most recently completed taxable year — that qualifies for the transitional relief under this notice and applies for reinstatement of tax-exempt status by December 31, 2012, will be treated by the Internal Revenue Service (“IRS”) as having established reasonable cause for its filing failures and its tax-exempt status will be reinstated retroactive to the date it was automatically revoked.

Organizations not described in this notice should consult Notice 2011–44, in this Bulletin, for guidance on how to apply for reinstatement of tax-exempt status and request retroactive reinstatement.

BACKGROUND

The Pension Protection Act of 2006, Pub. L. No. 109–280, 120 Stat. 780, § 1223 (2006), added sections 6033(i) and

(j) to the Internal Revenue Code (“Code”), both of which became effective for taxable years beginning after 2006. Section 6033(i) requires tax-exempt organizations excepted from filing annual information returns because they normally have annual gross receipts of not more than \$25,000 (increased to normally not more than \$50,000 for taxable years beginning on or after January 1, 2010) to annually file a Form 990–N e-Postcard. Section 6033(j) automatically revokes the tax-exempt status of any organization that fails to file a required annual return or Form 990–N e-Postcard for three consecutive years.

In order to obtain reinstatement of its tax-exempt status, an organization that has had its tax-exempt status automatically revoked under section 6033(j) must apply for reinstatement with the IRS, even if it was not originally required to submit such an application. I.R.C. § 6033(j)(2). If an organization applying for reinstatement of tax-exempt status can show reasonable cause for its consecutive filing failures, the organization’s tax-exempt status may, in the discretion of the Secretary, be reinstated retroactive to the date of the automatic revocation. I.R.C. § 6033(j)(3).

ELIGIBILITY FOR TRANSITIONAL RELIEF

The IRS recognizes that many small organizations that have lost their tax-exempt status because they failed to file a Form 990–N e-Postcard for their 2007, 2008, and 2009 taxable years were never required to file an annual return or notice prior to their 2007 taxable year. The IRS also recognizes that many small organizations are operated by volunteers and may face unique challenges in meeting federal tax obligations. Accordingly, the IRS will treat a small organization (one that normally has annual gross receipts of not more than \$50,000 in its most recently completed taxable year) as having established reasonable cause for failing to file a Form 990–N e-Postcard or an annual return for its taxable years beginning in 2007, 2008, and 2009 if it meets each of the following criteria:

- The organization was not required to file annual information returns (such as Form 990, *Return of Organization Exempt from Income Tax* or Form

990-EZ, *Short Form Return of Organization Exempt from Income Tax*) for taxable years beginning before 2007.

- The organization was eligible in each of its taxable years beginning in 2007, 2008, and 2009 to file a Form 990-N e-Postcard (rather than an annual information return). Generally organizations (other than private foundations and most section 509(a)(3) supporting organizations) with annual gross receipts that were normally not more than \$25,000 in such taxable years would have been eligible to file a Form 990-N e-Postcard.
- On or before December 31, 2012, the organization submits to the IRS a properly completed and executed application for reinstatement of tax-exempt status.

An organization's annual gross receipts are "normally not more than" \$25,000 or \$50,000 in a taxable year if its average annual gross receipts for that taxable year and the two taxable years immediately preceding it are not more than \$25,000 or \$50,000, respectively. See Rev. Proc. 2011-15, 2011-3 I.R.B. 322, section 4.

The IRS will reinstate the tax-exempt status of a small organization that meets the above criteria retroactive to the date it was revoked.

APPLICATION FOR REINSTATEMENT OF TAX-EXEMPT STATUS

An organization seeking reinstatement of tax-exempt status under section 6033(j)(2) must use the same forms that are filed by all other applicants for tax-exemption. Thus, an organization seeking reinstatement of tax-exempt status under section 501(c)(3) must submit Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. Most other organizations seeking reinstatement of tax-exempt status must submit Form 1024, *Application for Recognition of Exemption Under Section 501(a)*. Any organization that seeks reinstatement of tax-exempt status must submit the appropriate application regardless of whether the organization was originally required to apply with the IRS for recognition of tax-exemption.

A small organization seeking the transitional relief described in this notice must

write "Notice 2011-43" on the top of the form it uses to apply for reinstatement of tax-exempt status and on the envelope.

A small organization seeking the transitional relief described in this notice must also attach to its application for reinstatement of tax-exempt status the following statement:

[Name of Organization] was not required to file annual information returns for taxable years beginning before 2007; was eligible in each of its taxable years beginning in 2007, 2008 and 2009 to file a Form 990-N e-Postcard; and had annual gross receipts of normally not more than \$25,000 in each of its taxable years beginning in 2007, 2008 and 2009.

Small organizations that are eligible for the transitional relief described in this notice are also eligible for a reduced user fee of \$100 for the application of reinstatement of tax-exempt status. See Rev. Proc. 2011-36, this Bulletin, *modifying* Rev. Proc. 2011-8, 2011-1 I.R.B. 237, section 6.07. For information on where to mail the application for reinstatement of tax-exempt status, see the Instructions for Form 1023 or Form 1024 (whichever is applicable).

SUBSEQUENT AUTOMATIC REVOCATIONS

An organization whose tax-exempt status has been automatically revoked and reinstated may have its tax-exempt status automatically revoked a second time under section 6033(j)(1) only if it fails to file returns or notices for another three consecutive taxable years, beginning with the taxable year the IRS approves its application for reinstatement of tax-exempt status. For example, if an organization reporting on a calendar year basis has its tax-exempt status automatically revoked for failing to file required returns or notices for 2007, 2008, and 2009 and receives a determination letter recognizing the reinstatement of its tax-exempt status dated September 1, 2011, the organization's tax-exempt status will not be automatically revoked a second time for failing to timely file a return or notice for 2008, 2009, and 2010. However, the organization's tax-exempt status will be automatically revoked a second time if the organization fails to timely file a return or notice for 2011, 2012, and 2013.

DRAFTING INFORMATION

The principal authors of this notice are Monice Rosenbaum and Preston Quesenberry of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) and Matthew Giuliano of the Tax Exempt and Government Entities Division of the IRS. However, other personnel from the IRS and Treasury Department participated in developing this notice. For further information regarding this notice, contact Ms. Rosenbaum at (202) 622-6070, Mr. Quesenberry at (202) 622-1124, or Mr. Giuliano at (202) 283-8917 (not toll-free numbers).

Application for Reinstatement and Retroactive Reinstatement for Reasonable Cause Under Internal Revenue Code § 6033(j)

Notice 2011-44

SECTION 1. PURPOSE

This notice provides guidance with respect to applying for reinstatement of tax-exempt status and requesting retroactive reinstatement under sections 6033(j)(2) and (3) of the Internal Revenue Code ("Code") for an organization that has had its tax-exempt status automatically revoked under section 6033(j)(1) of the Code. The Treasury Department ("Treasury") and the Internal Revenue Service ("IRS") intend to issue regulations under section 6033(j) that will prescribe rules relating to the application for reinstatement of tax-exempt status under section 6033(j)(2) and the request for retroactive reinstatement under section 6033(j)(3). To assist in the drafting of these regulations, Treasury and the IRS solicit comments on the issues addressed in this notice.

In this Bulletin, the IRS has also published Notice 2011-43, which provides transitional relief for certain small organizations (those that normally have annual gross receipts of not more than \$50,000 in their most recently completed taxable year) that have lost their tax-exempt status because they failed to file an annual electronic notice for taxable years beginning

in 2007, 2008, and 2009. Notice 2011-43 sets forth the criteria for qualifying for the transitional relief and instructions on how qualifying organizations can apply for reinstatement of tax-exempt status retroactive to the date such status was automatically revoked.

SECTION 2. BACKGROUND

In general, section 6033(a)(1) requires an organization exempt from taxation under section 501(a) to file an annual information return, such as a Form 990, *Return of Organization Exempt from Income Tax*, a Form 990-EZ, *Short Form Return of Organization Exempt from Income Tax*, or a Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation*. Several categories of tax-exempt organizations, including most organizations (other than private foundations or section 509(a)(3) supporting organizations) whose annual gross receipts are normally not more than \$50,000 (\$25,000 for taxable years beginning before January 1, 2010), are not required to file an annual information return. See I.R.C. § 6033(a)(3); Rev. Proc. 2011-15, 2011-3 I.R.B. 322.

The Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780, § 1223 (2006) (“PPA”), added sections 6033(i) and (j) to the Code, both of which became effective for taxable years beginning after 2006. Section 6033(i) added an annual notification requirement for tax-exempt organizations that, pursuant to section 6033(a)(3)(A)(ii) or (a)(3)(B), are not required to file an annual information return under section 6033(a)(1) because their gross receipts fall below certain thresholds. An organization satisfies the annual notification requirement under section 6033(i) by filing an annual electronic notice, also known as a Form 990-N e-Postcard. The annual notification requirement is also deemed satisfied if an organization files a complete Form 990 or Form 990-EZ. See Treas. Reg. § 1.6033-6(c)(4).

Section 6033(j)(1) automatically revokes the tax-exempt status of any organization described in section 6033(a)(1) that fails to file a required annual return for three consecutive years or any organization described in section 6033(i) that

fails to file an annual return or notice for three consecutive years. Revocation under section 6033(j)(1) is effective on and after the date set by the Secretary for the filing of the third annual return or notice.

Section 6033(j)(1) also requires the Secretary to publish and maintain a list of all organizations that have had their tax-exempt statuses revoked under section 6033(j)(1) (“revocation list”). The IRS is publishing such a revocation list on the IRS website (<http://www.irs.gov>), which it will update monthly. The IRS is also mailing a letter to the last known address of each organization on the revocation list to notify the organization that its tax-exempt status has been revoked under section 6033(j)(1) (“IRS revocation letter”).

Section 7428(b)(4), as added by the PPA, provides that an organization may not bring a declaratory judgment action challenging automatic revocation under section 6033(j)(1).

Section 6033(j)(2) provides that any organization that has had its tax-exempt status automatically revoked under section 6033(j)(1) must apply with the IRS in order to obtain reinstatement of its tax-exempt status, regardless of whether the organization was originally required to apply for recognition of its tax exemption. If the application for reinstatement of tax-exempt status is approved, the effective date of the organization’s reinstated tax-exempt status generally will be the date the organization filed its application for reinstatement. However, section 6033(j)(3) provides that if, upon application for reinstatement, an organization “can show to the satisfaction of the Secretary evidence of reasonable cause for the failure described in [section 6033(j)(1)], the organization’s exempt status may, in the discretion of the Secretary, be reinstated effective from the date of the revocation.”

SECTION 3. EFFECTIVE DATE OF AUTOMATIC REVOCATION

For taxable years beginning after December 31, 2006, the tax-exempt status of any organization that fails to file an annual information return required under section 6033(a)(1) or an electronic notice required under section 6033(i) for three consecutive years is automatically revoked pursuant to section 6033(j)(1) on and after the date set by regulation for the filing of the

third annual return or notice, without regard to any extension of time for filing. Sections 1.6033-2(e) and 1.6033-6(f) of the Treasury Regulations generally require annual returns and notices, respectively, to be filed on or before the 15th day of the fifth month following the close of the period for which the return or notice is required to be filed. When the filing deadline falls on a Saturday, Sunday, or legal holiday the deadline may be timely satisfied if the filing is made on the next business day that is not a Saturday, Sunday, or a legal holiday. See I.R.C. § 7503. Thus, for example, in the case of an organization reporting on a calendar-year basis that did not file a required annual return or notice for 2007, 2008, or 2009, the revocation under section 6033(j)(1) would be effective as of May 17, 2010, given that May 15, 2010 fell on a Saturday.

SECTION 4. APPLICATION FOR REINSTATEMENT OF TAX-EXEMPT STATUS

An organization seeking reinstatement of its tax-exempt status under section 6033(j)(2) must apply using the same forms that are filed by all other applicants for tax exemption. Thus, an organization seeking reinstatement of its tax-exempt status under section 501(c)(3) must submit Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. Most other organizations seeking reinstatement of tax-exempt status must submit Form 1024, *Application for Recognition of Exemption Under Section 501(a)*. Any organization that seeks reinstatement of its tax-exempt status must submit the appropriate application regardless of whether the organization was originally required to apply with the IRS for recognition of tax exemption. For example, if the tax-exempt status of a subordinate organization included in a group exemption letter is automatically revoked under section 6033(j)(1), the subordinate organization must submit an application for reinstatement of its tax-exempt status on its own behalf. In addition, all organizations seeking reinstatement of tax-exempt status must pay the appropriate user fee. See Rev. Proc. 2011-8, 2011-1 I.R.B. 237, section 6.07 or its successor. (Small tax-exempt organizations described in Notice 2011-43 are eligible

for a reduced user fee described in Rev. Proc. 2011-36, this Bulletin.)

To facilitate processing of applications for reinstatement of tax-exempt status, organizations should write “automatically revoked” on the top of the application form and on the envelope. For information on where to mail the application for reinstatement of tax-exempt status, see the Instructions for Form 1023 or Form 1024 (whichever is applicable).

SECTION 5. RETROACTIVE REINSTATEMENT

.01 Request for Retroactive Reinstatement

An organization (other than a small organization that qualifies for the transitional relief described in Notice 2011-43) seeking to have its tax-exempt status reinstated effective from the date of automatic revocation pursuant to section 6033(j)(3) must submit a request for retroactive reinstatement with its application for reinstatement of tax-exempt status. The request for retroactive reinstatement must include the following:

(1) A written statement setting forth all of the facts that support its claim for reasonable cause for failing to file a required return or notice in each of the three consecutive years and over the entire consecutive three-year period, including a detailed description of all the facts and circumstances that led to each failure and the continuous failure, the discovery of the failures, and the steps taken to avoid or mitigate the failures;

(2) A written statement describing the safeguards the organization has put into place to ensure that the organization will not fail to file returns or notices in the future;

(3) Evidence to substantiate all material aspects of the written statements described in paragraphs (1) and (2) of this section;

(4) Properly completed and executed paper annual information returns (Forms 990, Forms 990-EZ, or Forms 990-PF, whichever is applicable) for all taxable years during and after the consecutive three-year period that the organization was required, but failed, to file an annual information return;

(5) Properly completed and executed Forms 990-EZ for all taxable years during and after the consecutive three-year period

that the organization was eligible to file a Form 990-N e-Postcard but failed to file either a Form 990-N e-Postcard or an annual information return; and

(6) An original declaration, dated and signed under penalties of perjury by an officer, director, trustee, or other official who is authorized to sign for the organization in the following form:

I, _____ (Name), _____ (Title) declare, under penalties of perjury, that I am authorized to sign this request for retroactive reinstatement on behalf of [Name of Organization], and I further declare that I have examined this request for retroactive reinstatement, including the written explanation of all the facts and information pertaining to the claim for reasonable cause and the evidence to substantiate the claim for reasonable cause, and to the best of my knowledge and belief, this request is true, correct, and complete.

.02 Reasonable Cause Standard

Because the failure described in section 6033(j)(1) involves a repeated and continuous failure to file annual returns or notices for a consecutive three-year period, an organization seeking retroactive reinstatement under section 6033(j)(3) must demonstrate that it had reasonable cause for failing to file a return or notice not only for each of the three years but also over the entire three-year period. Thus, for example, showing reasonable cause for failing to file a required return or notice for the first of the three years by the date it was due would be insufficient; an organization also would have to show reasonable cause for not filing that return or notice at any later time during the three-year period and for not filing required returns or notices for the second and third years of the three-year period.

In order to establish reasonable cause under section 6033(j)(3), an organization requesting retroactive reinstatement must provide evidence that it exercised ordinary business care and prudence in determining and attempting to comply with its reporting requirements under section 6033 for each of the three years and over the entire three-year period, but was nevertheless unable to file the required returns or notices for three consecutive years. In determining whether the organization establishes reasonable cause, the IRS will take into account all pertinent facts and circum-

stances, including, but not limited to, the following factors that weigh in favor of finding reasonable cause (with no single factor being either necessary or determinative):

(1) The organization’s failure was due to its reasonable, good faith reliance on erroneous written information from the IRS, stating that the organization was not required to file a return or notice under section 6033, provided the IRS was made aware of all relevant facts.

(2) The failure to file the returns or notices arose from events beyond the organization’s control (“impediment”) that made it impossible for the organization to file returns or notices for each of the three years at issue and over the entire three-year period.

(3) The organization acted in a responsible manner by undertaking significant steps to avoid or mitigate the failure to file the required returns or notices and to prevent similar failures in the future, including, but not limited to—

(a) Attempting to prevent an impediment or a failure, if it was foreseeable;

(b) Acting as promptly as possible to remove an impediment or the cause of the reporting failure, once the failure was discovered; and

(c) After the failure was discovered, implementing sufficient safeguards to ensure future compliance with the reporting requirements under section 6033.

(4) Aside from the three consecutive years in which the organization failed to file returns or notices, the organization has an established history of complying with its reporting requirements (if any) under section 6033 and/or any other applicable reporting or other requirements under the Code.

In determining whether reasonable cause exists, the IRS will only consider a factor on the above list or any other factor (such as the fact that substantially all of an organization’s activities are performed by volunteers) if the organization shows to the satisfaction of the IRS evidence to substantiate the factor.

.03 Timing of Request for Retroactive Reinstatement

Except for small organizations that qualify for the transitional relief described in Notice 2011-43, the IRS will, in exercising the discretion granted under section 6033(j)(3), consider an organization’s re-

quest for retroactive reinstatement only if it submits such a request, together with a properly completed and executed application for reinstatement of its tax-exempt status, within 15 months of the later of the date of the IRS revocation letter or the date on which the IRS posts the name of the organization on the revocation list available on the IRS website (or otherwise provides notice of the revocation to the public).

SECTION 6. SUBSEQUENT AUTOMATIC REVOCATIONS

An organization whose tax-exempt status has been automatically revoked and reinstated may have its tax-exempt status automatically revoked a second time under section 6033(j)(1) only if it fails to file returns or notices for another three consecutive taxable years, beginning with the taxable year the IRS approves its application for reinstatement of tax-exempt status. For example, if an organization reporting on a calendar year basis has its tax-exempt status automatically revoked for failing to file required returns or notices for 2007, 2008, and 2009 and receives a determination letter recognizing the reinstatement of its tax-exempt status dated September 1, 2011, the organization's tax-exempt status will not be automatically revoked a second time for failing to timely file a return or notice for 2008, 2009, and 2010. However, the organization's tax-exempt status will be automatically revoked a second time if the organization fails to timely file a return or notice for 2011, 2012, and 2013.

SECTION 7. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and approved under OMB control number 1545-2206.

The collection of information in this notice is in section 5. In order to have its tax-exempt status retroactively reinstated under section 6033(j)(3), an organization must show to the satisfaction of the IRS evidence that it exercised ordinary business care and prudence in determining and attempting to comply with its reporting obligations under section 6033 for each of

the three years (and over the entire three-year period) that it failed to meet such requirements. This information is necessary for inspection by the IRS in determining whether reasonable cause exists. The collection of information is required to meet the reasonable cause standard under section 6033(j)(3). The likely respondents providing the information required in section 5 of this notice are tax-exempt organizations that have had their tax-exempt statuses automatically revoked under section 6033(j)(1), have applied for reinstatement of such status under section 6033(j)(2), and are seeking that such reinstatement be made retroactive to the date of revocation under section 6033(j)(3).

Estimated total annual reporting burden: 2,917 hours.

Estimated average annual burden per respondent: 1 hour.

Estimated number of respondents over the next three years: 8,750.

Additional collection of information is proposed in section 4 of the notice, which will be reported and approved through Forms 1023 and 1024 (OMB approval numbers 1545-0056 and 1545-0057, respectively).

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.

SECTION 8. REQUEST FOR COMMENTS

Treasury and the IRS request comments regarding this notice and suggestions for future guidance regarding the provisions of section 6033(j). Comments should be submitted on or before August 19, 2011. Please include "Notice 2011-44" on the cover page. Comments should be sent to the following address:

Internal Revenue Service
CC:PA:LPD:PR (Notice 2011-44),
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20224.

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

Internal Revenue Service
Courier's Desk,
1111 Constitution Avenue, N.W.
Washington, D.C. 20224
Attn: CC:PA:LPD:PR
(Notice 2011-44)

Submissions may also be sent electronically to the following e-mail address:

Notice.Comments@irs.counsel.treas.gov.

Please include "Notice 2011-44" in the subject line.

All comments will be available for public inspection and copying.

SECTION 9. DRAFTING INFORMATION

The principal authors of this notice are Monice Rosenbaum and Preston Quesenberry of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) and Matthew Giuliano of the Tax Exempt and Government Entities Division of the IRS. However, other personnel from the IRS and Treasury Department participated in developing this notice. For further information regarding this notice, contact Ms. Rosenbaum at (202) 622-6070, Mr. Quesenberry at (202) 622-1124, or Mr. Giuliano at (202) 283-8917 (not toll-free numbers).

Restrictions on Use of the Term Registered Tax Return Preparer

Notice 2011-45

The Department of the Treasury and the IRS are implementing the recommendations contained in Publication 4832, "Return Preparer Review." As part of this implementation, the Department of the Treasury and the IRS have issued final regulations (T.D. 9527) that include registered tax return preparers as practitioners under 31 CFR Part 10 (reprinted as Treasury Department Circular 230).

The Department of the Treasury and the IRS have also published final regulations under I.R.C. § 6109 (75 FR 60309) providing that attorneys, certified public accountants, enrolled agents, and registered

tax return preparers who prepare all or substantially all of a tax return must obtain a preparer tax identification number (PTIN). In Notice 2011-6, 2011-3 I.R.B. 315, the IRS identified two additional groups of individuals who are eligible to obtain a PTIN: (1) specified individuals who are supervised by the attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary who signs the tax return or claim for refund prepared by the individual, and (2) individuals who certify they do not prepare or assist in the preparation of all or substantially all of any tax return or claim for refund covered by a competency examination. Notice 2011-6 further provided that individuals who are not attorneys, certified public accountants, enrolled agents, or registered tax return preparers may obtain a provisional PTIN before the date that the registered tax return preparer competency examination is first offered. After the competency examination is offered, only attorneys, certified public accountants, enrolled agents, registered tax return preparers, or the additional groups of individuals identified above will be eligible to obtain a PTIN. The IRS began issuing PTINs at the end of September 2010.

To become a registered tax return preparer, an applicant must pass a competency examination and tax compliance and suitability checks. The IRS has selected a vendor to develop and administer the competency examination, but the examination is not yet available. Additionally, the IRS is currently in the process of developing the suitability check. Because the conditions for becoming a registered tax return preparer are not yet able to be satisfied by any individual, no individual may represent that he is a registered tax return preparer. An individual with a provisional PTIN may not represent that he is a registered tax return preparer or has passed the competency examination. Once the competency examination is available, only an individual who has met all of the conditions to becoming a registered tax return preparer, including passing the competency examination and the tax compliance and suitability checks, may represent that he is a registered tax return preparer.

An individual who becomes a registered tax return preparer must comply with the applicable rules in Circular 230, including section 10.30 regarding practi-

tioner advertising and solicitation. Section 10.30 will be amended to require a registered tax return preparer using any paid advertising involving print, television or radio, in which the individual represents himself or herself to be a registered tax return preparer to display or broadcast the following statement: "The IRS does not endorse any particular individual tax return preparer. For more information on tax return preparers go to *IRS.gov*."

The principal author of this notice is Emily M. Lesniak of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, contact Emily M. Lesniak at (202) 622-4570 (not a toll-free call).

Deferral of Dates Related to the 2011 Branded Prescription Drug Fee

Notice 2011-46

Purpose

This notice defers two dates by which certain actions are to be taken for purposes of the branded prescription drug fee.

Background

An annual fee on covered entities engaged in the business of manufacturing or importing branded prescription drugs was enacted by section 9008 of the Patient Protection and Affordable Care Act (ACA), Public Law 111-148 (124 Stat. 119 (2010)), as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010 (HCERA), Public Law 111-152 (124 Stat. 1029 (2010)).

Notice 2011-9, 2011-6 I.R.B. 459, provides guidance for implementing this fee in 2011. Among other things, Notice 2011-9 states that the IRS will provide each covered entity with a preliminary fee calculation by May 16, 2011, and a final fee calculation by August 15, 2011.

Rev. Proc. 2011-24, 2011-20 I.R.B. 787, provides a dispute resolution process by which a covered entity may dispute its preliminary fee calculation before the IRS sends it a final fee calculation. Section 4.01 of the Rev. Proc. provides that a covered entity must provide a written error report to the IRS, postmarked by

June 1, 2011, in order for a correction to any claimed error to be considered by the IRS. Section 5.02(1) of the Rev. Proc. provides that the IRS will notify the covered entity in writing of the final determination with respect to error reports when the IRS sends the covered entity the final fee calculation no later than August 15, 2011.

Reason for change and deferral of dates

The IRS has been told that certain covered entities may have difficulty meeting the June 1 deadline for submitting these error reports because of the volume of data they need to review. Accordingly, this notice defers until June 10, 2011, the date by which error reports under Rev. Proc. 2011-24 must be postmarked in order to receive IRS consideration.

To preserve the time needed to give appropriate consideration to the error reports, the IRS will send covered entities their 2011 final fee calculation and, if applicable, notification of the final determination with respect to error reports by August 24, 2011, instead of August 15, 2011.

Effect on Other Documents

Notice 2011-9 and Rev. Proc. 2011-24 are modified.

Drafting Information

The principal author of this notice is Celia Gabrysh of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Celia Gabrysh at (202) 622-3130 (not a toll-free call).

Updated Reliance Rules for Contributors

Rev. Proc. 2011-33

SECTION 1. PURPOSE

This revenue procedure modifies and supersedes Revenue Procedure 82-39, 1982-2 C.B. 759, and Revenue Procedure 2009-32, 2009-28 I.R.B. 142, and provides the extent to which grantors and contributors (including donors) may rely on the listing of an organization in

Publication 78, *Cumulative List of Organizations described in § 170(c) of the Internal Revenue Code*, or on the IRS Business Master File (“BMF”) extract, for purposes of deducting contributions under § 170 and making grants under §§ 4942, 4945, and 4966. In addition, this revenue procedure clarifies that the Internal Revenue Service (“IRS”) may give notice of revocation, including revocations under §6033(j), through an appropriate public announcement, such as publication in the Internal Revenue Bulletin or on the IRS’s website at www.irs.gov.

SECTION 2. BACKGROUND

.01 Section 170, with certain limitations, allows deductions for federal income tax purposes of contributions or gifts made to or for the use of an organization that qualifies as an organization described in § 170(c). In order for contributions to be deductible, the organization must qualify at the time of the contribution. Thus, it is the responsibility of an organization receiving contributions to ensure that its character, purposes, activities, and method of operation satisfy the qualification requirements of § 170(c) in order for grantors and contributors to have the assurance that their contributions at the time made are deductible.

.02 Treas. Reg. § 1.509(a)–7(a) sets forth general rules regarding reliance by grantors and contributors to organizations described in §§ 509(a)(1), (2), and (3). This regulation provides that once an organization has received a ruling or determination letter classifying it as an organization described in § 509(a)(1), (2), or (3), the treatment of contributions and grants, and the status of grantors and contributors to such organization under §§ 170, 507, 545(b)(2), 642(c), 4942, 4945, 2055, 2106(a)(2), and 2522, will not be affected by reason of a subsequent revocation by the IRS of the organization’s classification as described in § 509(a)(1), (2), or (3) until the date on which notice of change of status is made to the public.

.03 Generally, Publication 78 lists organizations that have received a ruling or determination letter from the IRS stating that contributions by grantors or contributors to the listed organization (or to the listed central (or parent) organization and those local (or subordinate) units covered by the group

exemption letter) are deductible as provided in § 170. (Note that Publication 78 does not include separate listings for local organizations included in a group ruling.) Each ruling or determination letter is based on a factual showing by the listed organization that its character, purposes, activities, and method of operation satisfy the statutory requirements for qualification at the time the ruling or determination letter is issued. If there is a material change in the character, purposes, activities, or method of operation of an organization from those on which the ruling or determination letter was based and the change is such that the organization ceases, as a matter of law, to qualify under § 170(c), the ruling or determination letter also immediately ceases to be applicable (see also Sec. 11.02 of Rev. Proc. 2011–9, 2011–2 I.R.B. 283). Where this circumstance occurs, except for the validation provision of § 7428(c) (see Sec. 5.02), it is only by exercise of the authority under § 7805(b) that grantors or contributors to the organization may be allowed a deduction for grants or contributions made after the organization ceases to qualify under § 170(c).

.04 Through the use of a “deductibility code,” Publication 78 generally indicates the foundation classification under § 509(a) of the listed organizations. This classification determines the appropriate limitations for deductibility purposes and whether private foundations and sponsoring organizations of donor-advised funds making grants to particular organizations would be required to exercise expenditure responsibility. The coding system in Publication 78 does not indicate specifically whether an organization is described in § 509(a)(1), (2), or (3), or a particular subparagraph of § 170(b)(1)(A).

.05 The IRS no longer publishes a paper version of Publication 78. Grantors and contributors can no longer rely on the paper version of Publication 78 or any paper supplements for current information after the date of publication of this revenue procedure. Publication 78 now appears solely in electronic format on the IRS website at <http://www.irs.gov/app/pub-78>. Electronic Publication 78 and its electronic addenda are generally updated at least quarterly.

.06 The IRS also makes an extract of certain information on exempt organizations from the BMF available to the public

through the Tax Statistics section of the IRS website. The extract of the BMF contains more information, in a slightly different format, than Publication 78. Among the data fields provided are an organization’s name and Employer Identification Number (“EIN”), address, subsection code (the paragraph under § 501(c) under which it is recognized as exempt), ruling date, affiliation code (status as an independent, central, or local organization), deductibility code, foundation code (indicating whether an organization is a private foundation, private operating foundation, or public charity described in § 509(a)(1), (2), or (3)), and, if applicable, the appropriate subparagraph of § 170(b)(1)(A)), and other data fields. The IRS plans to modify the foundation codes in early 2011 to indicate whether a § 509(a)(3) organization is a Type I, Type II, Type III, or Type III functionally integrated supporting organization. Unlike Publication 78, the BMF extract contains information on all organizations that have been recognized by the IRS as tax-exempt, including organizations not eligible to receive tax deductible contributions. References to listing in or reliance on the BMF extract in this revenue procedure only pertain to organizations contributions to which have been determined to be deductible under §170, as reflected in the deductibility code in Publication 78 or the BMF extract.

.07 Due to its large size, the BMF extract is available as compressed ASCII Text or Excel spreadsheet files. These files must be downloaded and uncompressed before viewing. The BMF extract and its corresponding instructions are available for download directly from the IRS website at <http://www.irs.gov/taxstats/charitablestats/article/0,,id=97186,00.html>.

Generally, the BMF information is extracted and updated on a monthly basis.

.08 Temporary Regulations §§ 1.170A–9T(f)(5)(ii) and 1.509(a)–3T(e)(2), 73 Fed. Reg. 52,528 (Sept. 9, 2008), state generally that grantors and contributors may rely on an organization’s ruling that the organization is described in §§ 170(b)(1)(A)(vi) and 509(a)(1) or in § 509(a)(2) until the IRS publishes notice of a change of status (for example, in the Internal Revenue Bulletin or Publication 78), unless the grantor or contributor was responsible for, or aware of, the act or failure to act that results in

the organization's loss of public charity status.

.09 Section 6033(j) was added to the Internal Revenue Code as part of the Pension Protection Act of 2006, and is effective for returns and notices for tax years beginning after December 31, 2006. Section 6033(j) provides that an organization exempt from tax under § 501(a) that fails to file an annual return or submit an electronic notice for 3 consecutive years will lose its Federal tax exempt status. Section 6033(j) further provides that the IRS shall publish and maintain a list of any organization that is so revoked.

SECTION 3. RELIANCE ON PUBLICATION 78 AND THE BMF

.01 Revocations. Where an organization listed in or covered by Publication 78 or the BMF extract ceases to qualify as an organization contributions to which are deductible under § 170:

(1) and the IRS subsequently revokes a ruling or a determination letter previously issued to such organization, grants and contributions made to the organization by persons unaware of such change in status of the organization generally will be considered allowable if made on or before the date of an appropriate public announcement stating that the organization ceases to qualify as an organization contributions to which are deductible under § 170.

(2) as a result of loss of exempt status pursuant to § 6033(j), grants and contributions made to the organization by persons unaware of the change in the status of the organization generally will be considered allowable if made on or before the date of publication of the list of revoked organizations required by § 6033(j).

Publication in either case may be effected in the Internal Revenue Bulletin or on the IRS's website at <http://www.irs.gov> or by such other means designed to put the public on notice of the change in the organization's status.

Under certain circumstances, such as where a legally enforceable obligation under local law has been made to the organization prior to the date of publication, and the satisfaction of such obligation is on or after the date, the allowance period may

be extended upon specific exercise of authority under § 7805(b). See, for example, Rev. Rul. 78-129, 1978-1 C.B. 67. However, the IRS is not precluded from disallowing a deduction for any contribution made after an organization ceases to qualify under § 170, where grantor or contributor (1) had knowledge of the revocation of the ruling or determination letter prior to publication of the revocation, (2) was aware that such revocation was imminent, or (3) was in part responsible for, or was aware of, the activities or deficiencies on the part of the organization that gave rise to the loss of qualification.

.02 Foundation status. With regard to an organization's public charity status under § 509(a)(1), (2), or (3), grantors and contributors may rely on the classification of an organization listed in or covered by Publication 78 or the BMF extract for such purpose to the same extent as provided for § 170 purposes in paragraph .01 above. To the extent included in Publication 78 or the BMF extract, this includes whether a § 509(a)(3) organization is a Type I, Type II, Type III, or Type III functionally integrated supporting organization. Private foundations and sponsoring organizations of donor-advised funds may rely on an organization's foundation status (or supporting organization type) set forth in Publication 78 or the BMF extract for grant making purposes under §§ 4942, 4945, and 4966, except where the grantor (1) had knowledge of the revocation of the ruling or determination letter classifying the organization as one described in § 509(a)(1), (2), or (3) (or specifying its supporting organization type) prior to the publication of the revocation; or (2) was in part responsible for, or was aware of, the act or the failure to act that gave rise to the revocation of the ruling or determination letter classifying the organization as one described in § 509(a)(1), (2), or (3) (or specifying its supporting organization type).

.03 The advance assurance of deductibility and foundation status provided by paragraphs .01 and .02 above, respectively, applies only to grants or contributions made to an organization listed in or covered by Publication 78 or the BMF extract in the organization's official name, its recognized popular name, or a contraction of either of these names that is reasonably identifiable or widely known. The

advance assurance of deductibility and foundation status provided by paragraphs .01 and .02 does not apply to contributions or grants made nominally to an organization listed in or covered by Publication 78 or the BMF extract but with the understanding or on a condition that they be made available to or for the use of an organization not listed in or covered by Publication 78 or the BMF extract.

.04 The provisions of paragraphs .01 and .02 above do not apply to an organization that is not listed in or covered by Publication 78 or the BMF extract. In such a case the effect of a ruling or determination letter concerning the deductibility of contributions to the organization or its foundation status is determined in the manner described in Rev. Proc. 2011-4, 2011-1 I.R.B. 123.

.05 The advance assurance of deductibility and foundation status provided by paragraphs .01 and .02 above do not apply to local organizations included in a group ruling regardless of whether the local organization appears in the BMF extract. For further reliance information, follow the procedures listed in Publication 4573, *Group Exemptions*, and contact the tax-exempt central organization.

SECTION 4. RELIANCE ON BMF INFORMATION FROM OTHER SOURCES

A grantor or contributor may rely on information about an organization from the BMF extract that is obtained from a third party, so long as the following requirements are met:

- (1) The third party provides a report to the grantor or contributor that includes:
 - (A) the organization's name, EIN, foundation status under § 509(a)(1), (2), or (3) (including supporting organization type, if applicable), and whether contributions to such organization are deductible;
 - (B) a statement that the information is from the most current update of the BMF extract and the BMF extract revision date; and
 - (C) the date and time the information was provided to the grantor or contributor; and
- (2) The grantor or contributor retains a copy of the report in hard copy or electronically.

SECTION 5. RELATIONSHIP WITH § 7428

.01 Section 7428 creates a remedy under declaratory judgment procedures, in part, for cases involving a determination by the IRS with respect to the continuing qualification of an organization as one described in § 170(c)(2) or § 501(c)(3), or to the continuing classification of an organization under § 509(a). The remedy is available in these cases if the IRS determines that revocation of exemption under § 501(c)(3), deductibility status under § 170(c)(2), or foundation status under § 509(a) is appropriate, the organization has exhausted its administrative remedies, and the IRS has issued a final adverse determination letter to the organization. Under § 7428(b)(4), no action may be brought under § 7428 with respect to any revocation of status described in § 6033(j)(1).

.02 However, § 7428(c) provides for the “validation of certain contributions” made during the pendency of a proceeding for declaratory judgment involving the revocation of a determination that the organization is described in § 170(c)(2). Under this provision, the organization continues to be treated as an eligible organization described in § 170(c)(2) with respect to contributions from individuals (up to a maximum of \$1,000 in the aggregate during the pendency of the proceeding) and from other charitable organizations described in § 170(c)(2). Statutory protection for such contributions, if declaratory judgment is sought on the revocation action, would begin on the date of publication of the revocation and end on the date on which a decision in the Tax Court becomes final or a judgment of the District Court of the United States for the District of Columbia or the Court of Federal Claims is entered that the organization is not described in § 170(c)(2). This reliance, however, is not extended to any individual who was responsible, in whole or in part, for the activities (or failures to act) on the part of the organization that were the basis for the revocation.

SECTION 6. ERRORS OR OMISSIONS

Any errors or omissions in Publication 78 or the BMF extract should be reported by the tax-exempt organization

to the toll-free IRS customer service line at 1-877-829-5500.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 82-39, 1982-1 C.B. 759, is modified and superseded. Rev. Proc. 2009-32, 2009-28 I.R.B. 142 is modified and superseded.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective immediately upon publication in the Internal Revenue Bulletin.

SECTION 9. DRAFTING INFORMATION

The principal author of this Revenue Procedure is Melinda Williams of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this notice, contact Ms. Williams at 202-283-9467 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability. (Also: Part I §§ 362, 1.362-1, 351, 1.351-3, 1.358-6.)

Basis In Stock Acquired In Transferred Basis Transactions

Rev. Proc. 2011-35

SECTION 1. PURPOSE

This revenue procedure provides procedures that a corporation (Acquiring) may use to establish its basis in stock of another corporation (Target) when it acquires the Target stock in a transferred basis transaction.

SECTION 2. BACKGROUND

The Internal Revenue Service has long held that the optimal method for establishing basis in stock acquired in a reorganization described in § 368(a)(1)(B) of the Internal Revenue Code (B reorganizations) is

a survey of the surrendering Target shareholders. The Service has also long recognized that it will not be practical to survey all surrendering Target shareholders in all such cases, particularly where Target stock is publicly traded. To mitigate this concern, the Service published Rev. Proc. 81-70, 1981-2 C.B. 729, which provides survey procedures, as well as procedures for the use of statistical sampling and estimation of basis, for establishing basis in stock acquired in a B reorganization if a survey of all surrendering shareholders would not be practical or feasible.

Since the publication of Rev. Proc. 81-70, however, the operation of the securities market has changed significantly. Foremost among the changes has been the pervasive shift to the holding of stock in street name, that is, the holding of stock by nominees, typically clearinghouses or other financial institutions, on behalf of their members or customers. Because these nominee holders are subject to confidentiality and other restrictions, it is often difficult, if not impossible, for corporations acquiring stock in a B reorganization to obtain the information necessary to establish basis in acquired stock using the procedures prescribed by Rev. Proc. 81-70. Furthermore, the difficulties associated with determining basis in stock acquired in a B reorganization can also be present when determining basis in stock acquired in any transferred basis transaction.

In 2004, the Service undertook a study of the need for revised and further guidance in the determination of basis of shares acquired in transferred basis transactions. See Notice 2004-44, 2004-2 C.B. 32. The comments received in response to Notice 2004-44 were reflected in Notice 2009-4, 2009-2 I.R.B. 251, which affirmed the intent to revise the general provisions of Rev. Proc. 81-70, described three basis-determination safe harbors under consideration, and requested comments. The basis-determination safe harbors in Notice 2009-4 were: a survey-based methodology for shares surrendered by or on behalf of reporting shareholders, an estimation model based on stock registry and trading data for shares surrendered by registered, nonreporting shareholders, and an estimation model based on public trading data for shares surrendered by nominee shareholders. Comments were received affirming

the need for such guidance and suggesting various modifications to the safe harbor models.

This revenue procedure adopts the surveying and statistical sampling guidelines in Rev. Proc. 81-70, but updates and revises them to take current market practices into account. This revenue procedure also adopts the safe harbor methodologies described in Notice 2009-4, but modifies them to reflect the comments received, particularly regarding the need for a model that uses data more readily accessible to acquiring corporations. Finally, this revenue procedure expands the applicability of these provisions by permitting their use in any transferred basis transaction.

SECTION 3. OVERVIEW, GENERALLY APPLICABLE PROVISIONS

.01 *In General.* Section 4.0 of this revenue procedure sets forth procedures for four methodologies that taxpayers may use to determine basis in stock acquired in a transferred basis transaction. Section 4.01 provides procedures for surveying all surrendering Target shareholders to determine actual basis in surrendered shares. Section 4.02 provides procedures for the use of statistical sampling when a full survey is not feasible. Sections 4.03 and 4.04 provide estimation techniques that may be used in lieu of a full survey or statistical sampling when specified criteria are satisfied. Taxpayers may use one or more of these methodologies in any combination. If a taxpayer cannot or does not use the methodologies prescribed in this revenue procedure, basis in acquired Target shares may be established by such other methodologies as agreed by the Service and Acquiring.

Notwithstanding any provision of this revenue procedure, if Acquiring or the Service has or acquires (including by survey and by examining Target's books and records) knowledge of a surrendering shareholder's actual basis in a surrendered share, Acquiring's basis in the share is the surrendering shareholder's actual basis. For example, in many cases, if Target issued shares to employee plans or with respect to options, convertible stock, or convertible debt, the basis of the shares can be determined using Target's books

and records. In those cases, Acquiring's basis in the shares will be the actual basis as determined using Target's books and records. However, the Service will not undertake its own survey of shareholders (other than, perhaps, reporting shareholders) for the purpose of obtaining actual knowledge of their basis.

In the absence of actual knowledge, the Service will not assert an alternative basis, or an alternative method for determining basis, to the extent a taxpayer determines basis in Target stock in compliance with this revenue procedure.

The Appendix to this revenue procedure sets forth an illustration of the application of the estimation and modeling provisions in Section 4.

.02 *Definitions.* For purposes of this revenue procedure, the following definitions apply:

(1) *Registered shareholder.* The term "registered shareholder" means any Target shareholder that surrendered Target shares held in certificated form at the time of the transferred basis transaction.

(2) *Nominee shareholder.* The term "nominee shareholder" means any surrendering Target shareholder (whether surrendering shares it held on its own account or on behalf of a customer, member, or other beneficial owner) that, at the time of the transferred basis transaction, was either—

(a) A participant or member of the Depository Trust Company (DTC), or such other clearinghouse determined by the Service to be substantially similar to the DTC, that holds securities positions on its own behalf or on behalf of its clients, participants, members, or other persons, or

(b) A person required to file an SEC Form 13F or such other reporting form determined by the Service to be substantially similar to the SEC Form 13F.

(3) *Reporting shareholder.* The term "reporting shareholder" means any surrendering Target shareholder that, immediately before the transferred basis transaction, was either—

(a) The registered or nominee shareholder of publicly traded Target shares representing at least five percent of the vote or the value of all outstanding Target shares (or, in the case of shares that were not publicly traded, one percent of the vote or value of all outstanding Target shares), or, if identified in a nominee survey or otherwise known to Acquiring,

the beneficial owner of such amount of shares, or

(b) An officer or director of Target, or a plan that acquired Target stock for or on behalf of Target employees (such as an employee stock option or pension plan).

(4) *Security Position Report (SPR).* The term "Security Position Report" (SPR) means the securities position listings issued by the DTC and reporting the closing positions for securities held by DTC members. The term also includes similar publications of other clearinghouses, whether domestic or foreign, if it is established to the satisfaction of the Service that the publication is substantially similar to the DTC-issued SPR and the clearinghouse is substantially similar to the DTC.

(5) *SEC Form 13F.* The term "SEC Form 13F" means the reporting form filed by institutional investment managers pursuant to Section 13(f) of the Securities Exchange Act of 1934. The term also includes such other reporting forms required to be filed by a foreign jurisdiction if it is established to the satisfaction of the Service that such filing is substantially similar to the SEC Form 13F.

(6) *Master Securityholder File.* The term "Master Securityholder File" means the official listing of individual securityholder accounts holding certificated shares, see 17 C.F.R. § 240.17Ad-9 (1983).

(7) *Transferred basis transaction.* The term "transferred basis transaction" means any transaction in which Acquiring's basis in Target stock acquired in the transaction is determined by reference to the surrendering Target shareholders' bases in their surrendered shares. Transferred basis transactions include B reorganizations, § 351 exchanges, and certain triangular reorganizations (see § 1.358-6(c)(2)(ii) of the Income Tax Regulations).

(8) *Adjusted closing price.* The term "adjusted closing price" means the price at which a share of stock closed on an established securities market on a specified date, adjusted to take stock splits into account.

SECTION 4. PROCEDURES

.01 *Surveying.* This Section 4.01 provides procedures for surveying surrendering Target shareholders to establish basis

in the shares surrendered by or on behalf of such shareholders. The procedures of this Section 4.01 apply to all surveys, whether done with respect to all acquired shares, with respect to a sample of acquired shares under the statistical sampling procedures described in Section 4.02, or with respect to shares that are surrendered by or on behalf of reporting shareholders when basis is estimated under Section 4.03 or Section 4.04.

(1) *Timeliness requirement.* All surveys under this Section 4.01 must be done timely. A survey will generally be considered to have been done timely if it is substantially completed within two years of the transferred basis transaction. However, see Section 7 of this revenue procedure for the application of this requirement to transferred basis transactions completed prior to June 20, 2011.

(2) *Survey procedure.* All surveys done pursuant to this Section 4.01 are to be done in accordance with the following—

(a) *Identifying the Target shareholders to be surveyed.* Acquiring first identifies the surrendering shareholders that will be included in the survey. For this purpose, Acquiring may use Target's books and records, or such other information as is appropriate and available, including, for example, the Master Securityholder Files maintained by the stock transfer agent, or Securities Exchange Commission (SEC) filings, including Schedule 13 series and SPR data.

In general, Acquiring must survey all registered and nominee shareholders that surrendered Target stock in the transferred basis transaction. In addition, Acquiring must survey all other reporting shareholders identified by survey or otherwise. However, Acquiring need not survey—

(i) Any shareholder that is not a member of the survey sample and that surrendered Target stock the basis of which is to be determined under the statistical sampling method described in Section 4.02,

(ii) Any registered shareholder that is not a reporting shareholder and that surrendered Target stock the basis of which is to be determined under the estimation methodology described in Section 4.03, or

(iii) Any nominee shareholder that is not a reporting shareholder and that surrendered Target stock the basis of which

is to be determined under the estimation methodology described in Section 4.04.

(b) *Conducting the survey.* Once the survey subjects are identified, Acquiring begins the survey process by sending a letter to the last known address of each such shareholder, asking the shareholder to disclose the number of Target common and preferred shares surrendered, the shareholder's aggregate basis (by class) of those shares, and whether the shareholder held the shares as the beneficial or nominee owner. The letter must state the purpose for requesting the information, explain how basis is determined, and explain the importance of responding timely and accurately. In addition, the letter must request that—

(i) Any surrendering shareholder that was a beneficial owner provide the identity and contact information of any nominee holder of its surrendered share or shares; and

(ii) Any surrendering shareholder that was a nominee owner either:

(A) Provide the identity and contact information of the beneficial owner or owners of the shares it surrendered;

(B) Provide the aggregate number of common and preferred shares that it surrendered and the aggregate basis (by class) of those shares; or

(C) Forward the request for information (in a form provided by Acquiring) to the beneficial owners of its surrendered shares, requesting that such owners provide the basis information either directly to Acquiring or to the nominee (who would then provide the information to Acquiring).

After 30 days, Acquiring must make at least two additional attempts to contact all shareholders that failed to respond to the initial survey letter. This follow-up contact may be made by telephone, email, and/or such other means as appropriate and available.

(3) *Allowable basis.* The basis reported by surveyed shareholders will be deemed to be the surrendering shareholder's actual basis, and Acquiring's basis will therefore be the basis reported by such shareholders, unless the reported basis—

(i) Differs from the actual basis known by Acquiring or the Service, in which case Acquiring's basis will be such actual basis, or

(ii) Is inaccurate on its face and differs significantly from the trading prices of the shares at any time within a week of the date they were acquired in a cost-basis transaction. In such a case, the shareholder is considered to have failed to respond to the survey.

If a shareholder surveyed in accordance with this Section 4.01 fails to respond to Acquiring's request for basis information within 30 days of Acquiring's second follow-up attempt, Acquiring may determine its basis in a share or shares surrendered by or on behalf of the shareholder using such other procedures in this revenue procedure as are applicable.

.02 *Statistical Sampling.* This Section 4.02 provides procedures for the use of standard statistical sampling techniques to establish basis in Section 4.02 Eligible Shares (as defined in Section 4.02(1)) when the administrative cost of surveying all surrendering shareholders is unreasonably high. Factors that determine whether administrative cost is unreasonably high include the time, burden, and financial cost of conducting a full survey. The administrative cost of surveying every surrendering Target shareholder is presumed unreasonably high if, immediately before the transaction, Target stock was traded on an established securities market (within the meaning of § 1.7704-1(b) of the Procedure and Administration Regulations). Under this Section 4.02, Acquiring's basis in each Section 4.02 Eligible Share is determined in accordance with the following—

(1) *Section 4.02 Eligible Share.* The term "Section 4.02 Eligible Share" means any Target share—

(a) The actual basis of which is not known, and

(b) That is not surrendered by or on behalf of a reporting shareholder.

(2) *Statistical sampling procedure.* To satisfy the requirements of this Section 4.02—

(a) Statistical sampling is done separately for common and preferred shares.

(b) No reporting shareholders may be included in a sample to be surveyed.

(c) All shareholders in the sample must be surveyed under procedures described in Section 4.01, and

(d) The statistical sampling procedures used must comply with standard statistical sampling procedures recognized by the

Service. The use of statistical sampling has been provided for in several items of published guidance. See, for example, Rev. Proc. 2004-29, 2004-1 C.B. 918 (statistical sampling methodology for use in establishing the amount of substantiated meal and entertainment expenses that are excepted from the 50% deduction disallowance under section 274(n)(1)); Rev. Proc. 2007-35, 2007-1 C.B. 1349 (addressing when statistical sampling may be used for purposes of section 199 of the Code (income attributable to domestic production activities)); Rev. Proc. 2002-55, 2002-2 C.B. 435 (permitting external auditors of qualified intermediaries to use statistical sampling); and Rev. Proc. 72-36, 1972-2 C.B. 771 (setting forth statistical sampling guidelines for determining the redemption rate of trading stamps).

If the Service determines that Acquiring's sampling procedure fails to comply with accepted statistical sampling procedures, Acquiring will have an opportunity to recompute the estimate (Sample Basis Estimate), expand the sample, or make such other adjustments to the basis calculation as necessary to comply with standard statistical sampling procedures. Alternatively, Acquiring may determine its basis in Target stock using such other procedures in this revenue procedure as are applicable.

(3) *Allowable basis.* Acquiring's allowable basis in each Section 4.02 Eligible Share will be a valid estimate (Sample Basis Estimate) computed at the least advantageous 95% one-sided confidence limit. The "least advantageous" confidence limit is either the upper or lower limit that results in the least benefit to Acquiring. If the relative precision, as described in Section 4.02(4) of this revenue procedure, does not exceed 10%, the Sample Basis Estimate may be used as the basis for each Section 4.02 Eligible Share. For purposes of determining basis under this revenue procedure, where the relative precision is less than 15% and greater than 10%, Allowable Basis is an amount between the least advantageous 95% one-sided confidence limit and the Sample Basis Estimate, determined as follows:

Sample Basis Estimate - (Relative Precision - .10) / .05 × (Sample Basis Estimate - Least Advantageous 95% One-Sided Confidence Limit)

(4) *Calculating the relative precision for each estimator.* The relative precision for each estimator is commonly calculated by dividing the relative precision at the 95% one-sided confidence limit (sometimes referred to as the sampling error) of the Sample Basis Estimate by the estimator. Where a Sample Basis Estimate may be calculated using either a corrected value or difference perspective, as in the case of Ratio and Regression methods or solely a corrected value perspective as in the case of a Mean method, the test will be applied on the basis of a difference perspective. In such cases the numerator of the calculation is the sampling error of the adjustment and the denominator the Sample Basis Estimate of the adjustment.

.03 *Estimation Procedure for shares surrendered by registered shareholders and certain reporting shareholders.* This Section 4.03 provides procedures for determining basis of Section 4.03 Eligible Shares (as defined in Section 4.03(1)) using data from the Master Securityholder Files. Under this Section 4.03, Acquiring's basis in each Section 4.03 Eligible Share is determined in accordance with the following—

(1) *Section 4.03 Eligible Share.* The term "Section 4.03 Eligible Share" means any Target share—

(a) The actual basis of which is not known, and

(b) That was surrendered by a registered shareholder—

(i) That is not a reporting shareholder, or

(ii) That is a reporting shareholder that was surveyed and that failed to respond to the survey.

(2) *Estimation procedure.* Under this Section 4.03, Acquiring's basis in each Section 4.03 Eligible Share is determined in accordance with the following—

(a) *Establishing initial estimated basis of each Section 4.03 Eligible Share.* The initial estimated basis of each Section 4.03 Eligible Share is determined by treating the shareholder who surrendered the share as acquiring the share by purchase for the adjusted closing price on the date that the shareholder was issued its stock certificate. However, any amount so determined must be adjusted or revised to take into account any extraordinary issuance event. For this purpose, an extraordinary issuance event is any transaction or event that could have

caused the basis of a share to be materially different from the adjusted closing price on its issuance date, including but not limited to the following—

(i) On or about the date a stock certificate was issued to a surrendering Target shareholder, another certificate held by the same shareholder was cancelled. In such case, to the extent that the number of shares issued is less than or equal to the number of shares cancelled, the adjusted closing price for such newly issued shares will not be the adjusted closing price on the date the new certificate was issued, but, instead, the adjusted closing price on the date the earlier certificate was issued. If a cancelled certificate was originally issued concurrently with the cancellation of another certificate, the adjusted closing price is that on the date of the earlier (or earliest) issuance.

(ii) A share was acquired in a tax-free stock split or as a stock dividend by the shareholder who surrendered the share. In such case, the share will be assigned a proportionate amount of the basis of the original share determined under the applicable provisions of the Code and regulations. Or,

(iii) A share was acquired in a prior tax-free exchange by the shareholder who surrendered the share. In such case, the share will be assigned a basis determined under the applicable provisions of the Code and regulations (including the provisions of this revenue procedure).

(b) *Adjusting initial estimated basis.* The initial estimated basis of each Section 4.03 Eligible Share determined under Section 4.03(2)(a) must be adjusted for all subsequent transactions and events that would require an adjustment to basis under the Code (for example, to take into account distributions under § 301(c)(2)).

(3) *Allowable basis.* Acquiring's basis in each Section 4.03 Eligible Share is the initial estimated basis for the share determined under Section 4.03(2)(a) and adjusted as required by Section 4.03(2)(b).

.04 *Estimation procedure for shares surrendered by nominees.* This Section 4.04 provides procedures for determining the basis of Section 4.04 Eligible Shares (as defined in Section 4.04(1)(a)) using data from Target Security Position Reports (SPRs) or from SEC Form 13F filings (but not both). Under this Section 4.04, Acquiring's basis in each Section 4.04 El-

Eligible Share is determined in accordance with the following—

(1) *Definitions.* For purposes of this Section 4.04, the following definitions apply—

(a) *Section 4.04 Eligible Share.* The term “Section 4.04 Eligible Share” means any Target share—

(i) The actual basis of which is not known, and

(ii) That was surrendered by a nominee shareholder—

(A) That is not a reporting shareholder, or

(B) That is a reporting shareholder that was surveyed and failed to respond to the survey.

(b) *Data Collection Period.* The “Data Collection Period” is the period of time—

(i) Beginning on the later of—

(A) The first day of Target’s first taxable year, and

(B) Either—

(1) the later of the first date that the shares to be modeled are publicly traded and the date that is seven years before the date of the transferred basis transaction if Acquiring is estimating basis using Target’s SPR data, or

(2) the date that is ten years before the date of the transferred basis transaction if Acquiring is estimating basis using SEC Form 13F data, and

(ii) Ending on the date of the transferred basis transaction.

(c) *Measuring Date.* The term “Measuring Date” means any date with respect to which data is to be collected. The Measuring Dates are:

(i) If SPR data is being used to estimate basis, each Friday in the Data Collection Period on which SPR data was published or, if SPR data is not published on a Friday in a particular week, then the last date prior to that Friday on which SPR data was published, provided that such data is available from the DTC as of the date of the transferred basis transaction, and

(ii) If SEC Form 13F data is being used to estimate basis, each date in the Data Collection Period on which SEC Forms 13F are filed.

(2) *Estimation procedure.* The estimation of basis under this Section 4.04 is done separately for common and preferred shares, and estimations are made as follows—

(a) *Identifying modeled shareholders.* Acquiring first identifies the surrendering shareholders to be included in the estimation model (the modeled shareholders), and each such shareholder’s first and last Measuring Date. For this purpose—

(i) *If SPR data is being used to estimate basis,* the modeled shareholders are all surrendering shareholders identified on an SPR published at any time during the Data Collection Period (SPR modeled shareholder). With respect to each SPR modeled shareholder—

(A) The shareholder’s first Measuring Date is the first date on which the shareholder is continuously identified on Target SPRs, and

(B) The shareholder’s last Measuring Date is the last date for which Target SPR data is available.

(ii) *If SEC Form 13F data is being used to estimate basis,* the modeled shareholders are all surrendering shareholders that filed an SEC Form 13F at any time during the Data Collection Period (SEC modeled shareholders). With respect to each SEC modeled shareholder—

(A) The shareholder’s first Measuring Date is the first date on which the shareholder is identified in the SEC Form 13F data as holding Target shares, and

(B) The shareholder’s last Measuring Date is the last date on which the shareholder filed an SEC Form 13F.

(b) *Establishing each modeled shareholder’s aggregate initial estimated basis.* Each modeled shareholder is treated as purchasing the shares it is identified as holding on its first Measuring Date for an amount equal to the volume-weighted average adjusted closing prices for the period—

(i) Beginning on the later of the date that is three months prior to the shareholder’s first Measuring Date and the date that is Target’s first day of its first taxable year, and

(ii) Ending on the modeled shareholder’s first Measuring Date. This is the modeled shareholder’s aggregate initial estimated basis.

(c) *Adjusting each modeled shareholder’s initial estimated basis.* Each modeled shareholder’s initial estimated basis is adjusted by treating the shareholder as having purchased shares to the extent of any increase, and having sold

shares to the extent of any decrease, in the number of Target shares that the shareholder holds on the next Measuring Date for which data is available (the next date for which Acquiring has a Target SPR in the case of an SPR modeled shareholder, and the next date that the shareholder made an SEC Form 13F filing in the case of an SEC modeled shareholder). All deemed purchases are treated as having been made for an amount equal to the volume-weighted average of the adjusted closing prices for the period between the modeled shareholder’s immediately preceding Measuring Date and the next Measuring Date for which data is available; all deemed sales are treated as having been made on the average cost method. The process is repeated for every Measuring Date until the shareholder’s aggregate adjusted estimated basis is determined as of its last Measuring Date.

Each modeled shareholder’s aggregate adjusted basis on its last Measuring Date is divided by the total number of shares held by the shareholder on that date to determine the shareholder’s per share final estimated basis.

For purposes of the model, each Target share actually surrendered by a modeled shareholder is deemed to have a basis equal to the surrendering shareholder’s per share final estimated basis.

(d) *Section 4.04 per share modeled basis.* The deemed bases of all shares actually surrendered by modeled shareholders are combined and the total is divided by the number of shares actually surrendered by those shareholders. The result is the per share modeled basis.

(3) *Allowable basis.* Acquiring’s basis in each Section 4.04 Eligible Share is determined in accordance with the following—

(i) *If SPR data is used* to compute the Section 4.04 per share modeled basis, Acquiring’s basis in each Section 4.04 Eligible Share is equal to the Section 4.04 per share modeled basis multiplied by the percentage of Measuring Dates in the Data Collection Period for which SPR data is obtained. Thus, if there are 60 Measuring Dates in the Data Collection Period and Acquiring obtained SPR data for only 54 of those Measuring Dates, Acquiring’s basis in each Section 4.04 Eligible Share is an amount equal to 90 percent (54/60) of the Section 4.04 per share modeled basis. Fur-

ther, appropriate adjustments will be made if the Service determines that SPRs not included in the determination represent material omissions.

(ii) *If SEC Form 13F data is used to compute the Section 4.04 per share modeled basis, Acquiring's basis in each Section 4.04 Eligible Share is equal to the Section 4.04 per share modeled basis multiplied by 75 percent.*

SECTION 5. REPORTING REQUIREMENTS

Taxpayers acquiring stock in transferred basis transactions described in this revenue procedure are deemed to satisfy the reporting requirements of §§ 1.351-3 and 1.368-3 if they include a statement on or with the timely filed original return for the taxable year of the transferred basis transaction that identifies the transferred basis transaction and states that a basis study is pending with respect to the

acquired stock. However, to satisfy the requirements of those sections in such cases, the taxpayer must include complete statements as required under those regulations, with basis amounts determined pursuant to the study or otherwise under this revenue procedure, on or with a timely filed original return for a tax year that is no later than the tax year that includes the date that is two years after the date of the transferred basis transaction. See Section 7 of this revenue procedure for the application of this requirement to transferred basis transactions prior to June 20, 2011. This Section 5 applies to all transferred basis transactions without regard to whether basis is determined under Section 4 of this revenue procedure.

SECTION 6. PRE-FILING AGREEMENTS

The determination of whether a basis study is done in compliance with one of the

procedures described in Section 4 of this revenue procedure may be the subject of a pre-filing agreement.

SECTION 7. EFFECTIVE DATE, EFFECT ON OTHER DOCUMENTS

This revenue procedure is effective with respect to transferred basis transactions completed on or after June 20, 2011. However, taxpayers may use this revenue procedure with respect to transferred basis transactions completed prior to June 20, 2011; in such cases, surveys will be considered timely if substantially completed, and reporting requirements will be considered satisfied if filed, on or before June 20, 2013.

Rev. Proc. 81-70 and Notice 2009-4 are obsoleted with respect to transferred basis transactions completed on or after June 20, 2011.

APPENDIX

EXAMPLE, PART 1

DETERMINATION OF BASIS USING STOCK REGISTRY, CORPORATE BOOKS AND RECORDS, MARKET TRADING DATA, AND SEC FORM 13F FILING DATA

On January 1, Year 1, Target was formed. On February 2, Year 3, Acquiring acquired all 1000 outstanding shares of Target publicly traded common stock and all 100 outstanding shares of Target nonvoting preferred stock in a transferred basis transaction. The non-voting preferred stock is not publicly traded and, at the time of the transferred basis transaction, represents 2 percent of the value of Target. Immediately after the transaction, Acquiring collected information to establish its basis in the acquired shares. Acquiring will use the survey and estimation methods provided in this revenue procedure. Note that, to simplify computations, all numbers (other than those related to individual shares) are rounded to whole numbers; individual shares are rounded to the second place.

DATA COLLECTION:

1. From the stock registry, publicly available records (trading prices), and its own books and records, Acquiring collected the following information:

Shareholder	Issue date	Issue price		Shares issued and surrendered
Preferred shares				
Officer	1/1/Y1	No amount recorded		20
Employee Plan1	4/1/Y1	\$10/share		30
Employee Plan2	4/1/Y2	\$36/share		50
Total preferred shares surrendered by registered shareholders				100
Shareholder	Issue date	Adjusted closing price on issue date	High/Low trading price within one week of issue date	Shares issued and surrendered
Common shares				
Individual A	1/1/ Y1	\$ 9/share	\$7–12/share	10
Individual B	1/1/ Y1	\$ 9/share	\$7–12/share	10
Individual C	1/1/ Y2	\$12/share	\$8–13/share	50
Individual D	1/1/ Y2	\$12/share	\$8–13/share	50
Individual E	1/1/ Y2	\$12/share	\$8–13/share	50
Director A	1/1/ Y2	\$12/share	\$8–13/share	30
Private Placement	1/1/ Y2	\$12/share	\$8–13/share	50
Total common shares surrendered by registered shareholders				250

Target's books and records also indicate:

a. There was a \$5 distribution declared on each preferred share outstanding on 4/15/Y1. The distributions were made to Officer (\$100) and to Employee Plan1 (\$150) on 5/1/Y1. For the year of the distribution, Target had no earnings and profits.

b. On or about 1/1/Y2, the date that a certificate was issued to Individual C for 50 shares, a certificate issued on 1/1/Y1 to Individual C for 25 shares was cancelled.

2. From SEC Form 13F Filings, publicly available trading information, and its own books and records, Acquiring collected the following information regarding the ownership of its common shares held by nominees:

Nominee shareholder	SEC Form 13F Filing date	Shares reported	Vol Wtd Avg adjusted closing price*	High/low trading price in quarter	Shares surrendered
Nominee1	Y1: 1 st quarter	30	8	\$5-14/share	250
	Y1: 2 nd quarter	45	10	\$5-14/Share	
	Y1: 3 rd quarter	120	11	\$5-14/Share	
	Y1: 4 th quarter	160	12	\$5-14/share	
	Y2: 1 st quarter	200	10	\$6-15/share	
	Y2: 2 nd quarter	150	12	\$6-15/share	
	Y2: 3 rd quarter	200	14	\$6-15/share	
	Y2: 4 th quarter	200	16	\$6-18/share	
Nominee2	Y1: 1 st quarter	No Form13F filed	8	\$5-14/share	175
	Y1: 2 nd quarter	250	10	\$5-14/Share	
	Y1: 3 rd quarter	250	11	\$5-14/Share	
	Y1: 4 th quarter	200	12	\$5-14/share	
	Y2: 1 st quarter	200	10	\$6-15/share	
	Y2: 2 nd quarter	300	12	\$6-15/share	
	Y2: 3 rd quarter	300	14	\$6-15/share	
	Y2: 4 th quarter	150	16	\$6-18/share	
Nominee3	Y1: 1 st quarter	No Form13F filed	8	\$5-14/share	100
	Y1: 2 nd quarter	No Form13F filed	10	\$5-14/Share	
	Y1: 3 rd quarter	75	11	\$5-14/Share	
	Y1: 4 th quarter	75	12	\$5-14/share	
	Y2: 1 st quarter	No Form13F filed	10	\$6-15/share	
	Y2: 2 nd quarter	100	12	\$6-15/share	
	Y2: 3 rd quarter	135	14	\$6-15/share	
	Y2: 4 th quarter	150	16	\$6-18/share	

Nominee4	Y1: 1 st quarter	50	8	\$5-14/share	100
	Y1: 2 nd quarter	50	10	\$5-14/Share	
	Y1: 3 rd quarter	100	11	\$5-14/Share	
	Y1: 4 th quarter	No Form13F filed	12	\$5-14/share	
	Y2: 1 st quarter	100	10	\$6-15/share	
	Y2: 2 nd quarter	150	12	\$6-15/share	
	Y2: 3 rd quarter	200	14	\$6-15/share	
	Y2: 4 th quarter	No Form13F filed	16	\$6-18/share	
Nominee5	Y1: 1 st quarter	No Form13F filed	8	\$5-14/share	125
	Y1: 2 nd quarter	No Form13F filed	10	\$5-14/Share	
	Y1: 3 rd quarter	No Form13F filed	11	\$5-14/Share	
	Y1: 4 th quarter	50	12	\$5-14/share	
	Y2: 1 st quarter	50	10	\$6-15/share	
	Y2: 2 nd quarter	No Form13F filed	12	\$6-15/share	
	Y2: 3 rd quarter	200	14	\$6-15/share	
	Y2: 4 th quarter	250	16	\$6-18/share	

* the volume weighted average adjusted closing price applicable with respect to the first Measuring Date is determined for the period beginning on the later of Target's first day of its first tax year and the day that is three months prior to the first Measuring Date; the volume weighted average adjusted closing price applicable to all subsequent Measuring Dates is determined for the period between Measuring Dates.

DATA ANALYSIS:

IDENTIFYING APPLICABLE BASIS DETERMINATION METHODS

Shareholder	Reporting shareholder status	Survey required	Eligible procedure(s)
Preferred shares (not publicly traded, one percent standard applies):			
Officer	Reporting shareholder (<1% vote and value, but specified relationship); issue price not recorded	Yes	4.01
Employee Plan1	Reporting shareholder (<1% vote and value, but specified relationship); issue price recorded	No	None, actual basis known
Employee Plan2	Reporting shareholder (1% of value and specified relationship); issue price recorded	No	None, actual basis known

Common shares (publicly traded, five percent standard applies):			
Individual A	Not reporting shareholder (<5% vote and value, no specified relationship)	No	4.01 or 4.03
Individual B	Not reporting shareholder (<5% vote and value, no specified relationship)	No	4.01 or 4.03
Individual C	Reporting shareholder (5% vote)	Yes	4.01; 4.03 if surveyed and no response
Individual D	Reporting shareholder (5% vote)	Yes	4.01; 4.03 if surveyed and no response
Individual E	Reporting shareholder (5% vote)	Yes	4.01; 4.03 if surveyed and no response
Director A	Reporting shareholder (<5% vote and value but specified relationship)	Yes	4.01; 4.03 if surveyed and no response
Private Placement	Reporting shareholder (5% vote)	Yes	4.01; 4.03 if surveyed and no response
Nominee1	Reporting shareholder (5% vote and value)	Yes	4.01; 4.04 if surveyed and no response
Nominee2	Reporting shareholder (5% vote and value)	Yes	4.01; 4.04 if surveyed and no response
Nominee3	Reporting shareholder (5% vote and value)	Yes	4.01; 4.04 if surveyed and no response
Nominee4	Reporting shareholder (5% vote and value)	Yes	4.01; 4.04 if surveyed and no response
Nominee5	Reporting shareholder (5% vote and value)	Yes	4.01; 4.04 if surveyed and no response

BASIS DETERMINATIONS UNDER SECTION 4.01 (SURVEY METHOD)

Acquiring conducted a survey of the following shareholders. The survey complied with the procedures of Section 4.01(2)(b). The following summarizes the results of the survey:

Shareholder surveyed	Shareholder's response/basis	Allowable basis from survey	Eligible for other procedure?
Preferred shares:			
Officer	No response	None	No, insufficient data for models
Employee Plan1	\$4.50/share for 30 preferred shares; in addition, Employee Plan1 reported it owned 50 common shares surrendered by Nominee1 (\$12/share)	None for preferred (actual = \$10 - 5 = \$5); as reported (\$12/share) for common	No

Common shares:			
Individual A	\$13/share	As reported (\$13/share)	No
Individual C	No response	None	Yes, Section 4.03
Individual E	\$40/share (nonresponsive, \$40 inaccurate on its face)	None	Yes, Section 4.03
Director A	\$1/share (nonresponsive, \$1 inaccurate on its face)	None	Yes, Section 4.03
Private Placement	No response	None	Yes, Section 4.03
Nominee1	No response	None	Yes, Section 4.04
Nominee2	\$65/share (nonresponsive, \$65 inaccurate on its face)	None	Yes, Section 4.04
Nominee4	No response	None	Yes, Section 4.04
Nominee5	No response	None	Yes, Section 4.04

Notes:

Officer. Although Acquiring surveyed Officer and received no response, Acquiring cannot determine basis in the shares surrendered by Officer by the methods described in Section 4.03 and Section 4.04 because the requisite market information is not available.

Employee Plans. Because Acquiring had knowledge of actual basis (issue price was recorded in the register), Acquiring's basis is the actual basis of the shares (\$10, reduced by the \$5/share "section 301(c)(2)" distribution, or \$5), notwithstanding that Employee Plan1 reported a basis of \$4.50 in the shares. Although Acquiring was not required to survey Employee Plan1, because it did and Employee Plan1 reported that, in addition to the preferred shares, it also beneficially owned 50 of the shares of common stock held by Nominee1, the basis of each of those 50 common shares is the \$12/share basis reported by Employee Plan1 (even though all of Nominee1's trading activity, including with respect to the 50 shares held on behalf of Employee Plan1, will be taken into account in modeling basis in Section 4.04).

Individual A. Although Acquiring was not required to survey Individual A in order to use the estimation method in Section 4.03, Acquiring did survey Individual A and Individual A responded to the survey. Accordingly, the basis in the shares surrendered by Individual A is Individual A's reported basis of \$13 per share, notwithstanding that the basis determined under Section 4.03 would only be \$9/share for those shares.

Individual B. Acquiring does not have an actual basis for Individual B and was not required to survey Individual B in order to use the estimation method in Section 4.03. Accordingly, Acquiring may determine the basis of Individual B's shares using the estimation method in Section 4.03.

Individual C. Individual C, a reporting shareholder, was surveyed but did not respond. Accordingly, Acquiring may determine the basis of Individual C's shares using the estimation method in Section 4.03.

Individual D. Individual D, a reporting shareholder, was not surveyed. As a result, Acquiring has not satisfied the requirements for using the estimation procedures in this revenue procedure and, thus, cannot establish the bases of those shares under this revenue procedure. However, Acquiring may establish its bases in those shares under such other method as agreed to by the Service.

Individual E and Director A. Individual E and Director A, both reporting shareholders, were surveyed and responded. However, the survey responses given by Individual E (\$40/share) and Director A (\$1/share) are inaccurate on their faces because they differ significantly from the high/low trading prices within a week of their acquisition by the surrendering shareholders (\$8-\$13/share), and thus Individual E and Director A are considered to have not responded to the survey and the reported bases are disregarded. Acquiring may therefore establish its bases in those shares using the procedures in Section 4.03.

Nominee shareholders. All five of the nominee shareholders are reporting shareholders and must therefore be surveyed in order to determine the bases of their surrendered shares under the modeling procedure of Section 4.04. Acquiring surveyed all the nominee shareholders except Nominee3. Nominee1, Nominee4, and Nominee5 failed to respond. Further, although Nominee2 responded, its response was inaccurate on its face (\$65/share) and so Nominee2 is considered also to have not responded. As a result, Acquiring has generally satisfied the requirements to determine its bases in the shares surrendered by Nominee1, Nominee2, Nominee4, and Nominee5 under Section 4.04. However, with respect to Nominee1, Acquiring received survey information on the basis of 50 common shares it held and surrendered on behalf of Employee Plan1, and so 50 of the shares surrendered by Nominee1 will have a basis equal to the reported basis. Because Nominee3 was not surveyed, Acquiring has not satisfied the requirements for using the estimation

procedures in this revenue procedure and so cannot use these procedures to determine the bases of those shares. However, Acquiring may establish its bases in the shares surrendered by Nominee3 under such other method as agreed to by the Service. Note that, although the bases of 50 shares surrendered by Nominee1 and all the shares surrendered by Nominee3 are not determined under Section 4.04, all the trading information collected with respect to Nominee1 and Nominee3 is included in the modeling computations.

BASIS DETERMINATIONS UNDER SECTION 4.03

Even though Individual C, Individual E, Director A, and Private Placement were reporting shareholders, Acquiring surveyed them, they failed to respond, and Acquiring has knowledge of the issue date of shares issued to such shareholders. Thus, the shares they surrendered are Section 4.03 Eligible Shares. The bases in the Section 4.03 Eligible Shares are computed as follows (rounding numbers other than “per share” numbers):

Surrendering shareholder	Adjusted closing price on issue date	Number of shares surrendered	Allowable basis
Common shares:			
Individual B	\$ 9	10	\$90
Individual C	\$ 9	25	\$225
	\$12	25	\$300
Individual E	\$12	50	\$600
Director A	\$12	30	\$360
Private Placement	\$12	50	\$600

Note: In determining the basis of Individual C’s 50 shares, Acquiring must take into account the cancellation of a certificate for 25 shares (issued to Individual C on 1/1/Y1) on the same day that the certificate for 50 shares was issued to Individual C. Individual C is treated as surrendering 25 shares with a basis equal to the closing price on 1/1/Y1 and 25 shares with a basis equal to the closing price on 1/1/Y2.

BASIS DETERMINATIONS UNDER SECTION 4.04 (FORM 13F DATA)

Acquiring’s bases in Section 4.04 Eligible Shares are computed as follows:

Surrendering shareholder	Filing date	Shares reported	Vol wtd avg adj closing price for period	Modeled basis (Initial estimated basis adjusted each measuring date for increases and decreases in reported holdings)	Deemed basis in surrendered shares
Nominee1	Y1: 1 st quarter	30	8	<u>Initial estimated basis:</u> 30 shares reported x \$8 vol wtd avg closing price per share = <u>\$240</u>	
	Y1: 2 nd quarter	45	10	Reported shares increased (30 to 45): 15 shs @\$10/sh = \$150 <u>Adjusted estimated basis:</u> \$240+\$150 = <u>\$390</u>	
	Y1: 3 rd quarter	120	11	Reported shares increased (45 to 120): 75 shs @\$11/sh = \$825 <u>Adjusted estimated basis:</u> \$390+825 = <u>\$1215</u>	
	Y1: 4 th quarter	160	12	Reported shares increased (120 to 160): 40 shs @\$12/sh = \$480 <u>Adjusted estimated basis:</u> \$1215+480 = <u>\$1695</u>	
	Y2: 1 st quarter	200	10	Reported shares increased (160 to 200): 40 shs @\$10/sh = \$400 <u>Adjusted estimated basis:</u> \$1695+400 = <u>\$2095</u>	
	Y2: 2 nd quarter	150	12	Reported shares decreased (200 to 150): Average cost of shares: \$2095/200 = \$10.48/sh; 50 shs @\$10.48/sh = \$524 <u>Adjusted estimated basis:</u> \$2095-524 = <u>\$1571</u>	
	Y2: 3 rd quarter	200	14	Reported shares increased (150 to 200): +50 shs @\$14/sh = \$700 Adjusted estimated basis \$1571+700 = <u>\$2271</u>	
	Y2: 4 th quarter	200	16	No change in holdings	
\$2271 aggregate adjusted estimated basis / 200 shares = \$11.36 per share final estimated basis					
250 shares surrendered x \$11.36 per share final estimated basis = \$2840 deemed basis in surrendered shares					\$2840

Nominee2	Y1: 1 st quarter	No 13F filed	8	
	Y1: 2 nd quarter	250	10	<u>Initial estimated basis:</u> 250 shares reported x \$10 vol wtd avg closing price per share = \$2500
	Y1: 3 rd quarter	250	11	No change in holdings
	Y1: 4 th quarter	200	12	Reported shares decreased (250 to 200): Average cost of shares: \$2500/250 = \$10; 50 shs @\$10/sh = \$500 <u>Adjusted estimated basis:</u> \$2500-500 = \$2000
	Y2: 1 st quarter	200	10	No change in holdings
	Y2: 2 nd quarter	300	12	Reported shares increased (200 to 300): +100 shs @\$12/sh = \$1200 <u>Adjusted estimated basis:</u> \$2000+1200 = \$3200
	Y2: 3 rd quarter	300	14	No change in holdings
	Y2: 4 th quarter	150	16	Reported shares decreased (300 to 150): Average cost of shares: \$3200/300 = \$10.67; 150 shs @\$10.67/sh = \$1601 <u>Adjusted estimated basis:</u> \$3200-1601 = \$1599
\$1600 aggregate adjusted estimated basis / 150 shares = \$10.67 per share final estimated basis				
175 shares surrendered x \$10.66 per share final estimated basis = \$1867 deemed basis in surrendered shares				
				\$1867

Nominee3	Y1: 1 st quarter	No 13F filed	8	
	Y1: 2 nd quarter	No 13F filed	10	
	Y1: 3 rd quarter	75	11	<u>Initial estimated basis:</u> 75 shares reported x \$11 vol wtd avg closing price per share = <u>\$825</u>
	Y1: 4 th quarter	75	12	No change in holdings
	Y2: 1 st quarter	No 13F filed	10	No change in holdings
	Y2: 2 nd quarter	100	12	Reported shares increased (75 to 100): +25 shs @\$12/sh = \$300 <u>Adjusted estimated basis:</u> \$825+\$300 = <u>\$1125</u>
	Y2: 3 rd quarter	135	14	Reported shares increased (100 to 135): +35 shs @\$14/sh = \$490 <u>Adjusted estimated basis:</u> \$1125+\$490 = <u>1615</u>
	Y2: 4 th quarter	150	16	Reported shares increased (135 to 150): +15 shs @\$16/sh = \$240 <u>Adjusted estimated basis:</u> \$1615+\$240 = <u>1855</u>
\$1855 aggregate adjusted estimated basis / 150 shares = \$12.37 per share final estimated basis				
100 shares surrendered x \$12.37 per share final estimated basis = \$1237 deemed basis in surrendered shares				
				\$1237

Nominee4	Y1: 1 st quarter	50	8	<u>Initial estimated basis:</u> 50 shares reported x \$8 vol wtd avg closing price per share = <u>\$400</u>	
	Y1: 2 nd quarter	50	10	No change in holdings	
	Y1: 3 rd quarter	100	11	Reported shares increased (50 to 100): +50 shs @\$11/sh = \$550 <u>Adjusted estimated basis:</u> <u>\$400+550 = \$950</u>	
	Y1: 4 th quarter	No 13F filed	12	No change in holdings	
	Y2: 1 st quarter	100	10	No change in holdings	
	Y2: 2 nd quarter	150	12	Reported shares increased (100 to 150): +50 shs @\$12/sh = \$600 <u>Adjusted estimated basis:</u> <u>\$950+600 = \$1550</u>	
	Y2: 3 rd quarter	200	14	Reported shares increased (150 to 200): +50 shs @\$14/sh = \$700 <u>Adjusted estimated basis:</u> <u>\$1550+700 = \$2250</u>	
	Y2: 4 th quarter	No 13F filed	16	No change in holdings	
\$2250 aggregate adjusted estimated basis / 200 shares = \$11.25 per share final estimated basis					
100 shares surrendered x \$11.25 per share final estimated basis = \$1125 deemed basis in surrendered shares					
					\$1125

Nominee5	Y1: 1 st quarter	No 13F filed	\$8	
	Y1: 2 nd quarter	No 13F filed	\$10	
	Y1: 3 rd quarter	No 13F filed	\$11	
	Y1: 4 th quarter	50	\$12	<u>Initial estimated basis:</u> 50 shares reported x \$12 vol wtd avg closing price per share = \$600
	Y2: 1 st quarter	50	\$10	No change in holdings
	Y2: 2 nd quarter	No 13F filed	\$12	No change in holdings
	Y2: 3 rd quarter	200	\$14	Reported shares increased (50 to 200): +150 shs @ \$14/sh = \$2100 <u>Adjusted estimated basis:</u> \$600 + 2100 = \$2700
	Y2: 4 th quarter	250	\$16	Reported shares increased (200 to 250): +50 shs @ \$16/sh = \$800 <u>Adjusted estimated basis:</u> \$2700 + 800 = \$3500
\$3500 aggregate adjusted estimated basis / 250 shares = \$14 per share final estimated basis				
125 shares surrendered x \$14 per share final estimated basis = \$1750 deemed basis in surrendered shares				\$1750

Computation of Section 4.04 per share modeled basis (common shares):

Nominee shareholder	Per share final estimated basis	Surrendered shares	Deemed basis in surrendered shares
Nominee1	11.36	250	\$2840
Nominee2	10.67	175	\$1867
Nominee3	12.37	100	\$1237
Nominee4	11.25	100	\$1125
Nominee5	14.00	125	\$1750
Total deemed basis in surrendered shares			\$8819
Total number of surrendered shares			750
Section 4.04 per share modeled basis			\$11.76
Section 4.04 per share modeled basis x 75% = Allowable basis for each Section 4.04 Eligible Share			\$8.82

ALLOCATION OF ALLOWABLE BASIS
TO SECTION 4.04 ELIGIBLE SHARES

Surrendering shareholder	Allowable basis per share	Surrendered Section 4.04 Eligible Shares	Total allowable basis
Nominee1	\$8.82	200	\$1764
Nominee2	\$8.82	175	\$1544
Nominee3	\$8.82	0	0
Nominee4	\$8.82	100	\$882
Nominee5	\$8.82	125	\$1103

Notes:

Nominee1. As noted above, the basis of 50 of the 250 shares surrendered by Nominee1 was reported by Employee Plan1 and so was not determined under the Section 4.04 model.

Nominee3. As noted above, Acquiring did not satisfy the requirements to determine its basis in the shares surrendered by Nominee3 under this revenue procedure. Thus, there is no basis allowable under the model; however, Acquiring may establish its bases in those shares under such other method as agreed to by the Service.

SUMMARY
BASIS DETERMINED UNDER REVENUE PROCEDURE
(SEC FORM 13F FILING DATA)

Surrendering shareholder	Applicable method	Allowable basis	Shares surrendered	Total allowable basis under revenue procedure
Preferred shares (100 outstanding):				
Officer	Cannot be established under this revenue procedure	TBD under procedures as agreed to by Service	20	\$0
Employee Plan1	Actual, as determined by Target's records	\$5/share (\$10 issue price, less \$5 §301(c)(2) distribution)	30	\$150
Employee Plan2	Actual, as determined by Target's records	\$36/share	50	\$1800
Total basis in preferred shares				\$1950
Common shares (1000 outstanding):				
Employee Plan1	As reported in survey, 4.01	\$12/share	50	\$600
Individual A	As reported in survey, 4.01	\$13/share	10	\$130
Individual B	4.03	\$ 9/share	10	\$90

Individual C	4.03	\$9/share \$12/share	25 25	\$525
Individual D	Cannot be established under this revenue procedure	TBD under procedures as agreed to by Service	50	\$0
Individual E	4.03	\$12/share	50	\$600
Director A	4.03	\$12/share	30	\$360
Private Placement	4.03	\$12/share	50	\$600
Nominee1	4.04	\$8.82/share	200	\$1764
Nominee2	4.04	\$8.82/share	175	\$1544
Nominee3	Cannot be established under this revenue procedure	TBD under procedures as agreed to by Service	100	\$0
Nominee4	4.04	\$8.82/share	100	\$882
Nominee5	4.04	\$8.82/share	125	\$1103
Total basis in common shares				\$8,198
Total number of shares (preferred plus common) surrendered				1100
Total basis in all shares				\$10,148

EXAMPLE, PART 2:

DETERMINATION OF BASIS USING
STOCK REGISTRY, BOOKS AND RECORDS,
AND SPR DATA

Assume that the facts are the same as in *Example 1*, except that Acquiring uses data from Target's SPRs instead of the SEC Form 13F filings. Further, Acquiring obtains 100 of the 109 SPRs that were published during the data collection period and that were available from the DTC as of the date of the transaction (the missing SPRs are not a material omission); the first SPR obtained by Acquiring that shows Target stock ownership was published in Week 4; the only other SPRs that show movement in Target holdings were published in Weeks 21, 34, 48, 60, 72, 80, and 104. (Note that, to simplify the illustration, the SPR dates correspond to the SEC Form 13F filing dates in Part 1 of this example; thus, the numbers of shares reported (and their volume weighted average adjusted closing price) on the first SEC Form 13F filing correspond to those on the Week 4 SPR, the second SEC Form 13F filing numbers (and prices) to those in SPR Week 21, and so forth; where no SEC Form 13F was filed, the shares reported are zero; the number of shares surrendered are unchanged.) The determination of the Section 4.04 modeled basis using SPR data is done as follows:

Surrendering shareholder	Date of SPR	Shares listed on SPR	Vol wtd avg closing price for period*	Modeled basis (Initial estimated basis adjusted each measuring date for increases and decreases in reported holdings)	Deemed basis in surrendered shares
Nominee1	Week 4	30	8	<u>Initial estimated basis:</u> 30 shares reported x \$8 vol wtd avg closing price per share = <u>\$240</u>	
	Week21	45	10	Reported shares increased (30 to 45): 15 shs @\$10/sh = \$150 <u>Adjusted estimated basis:</u> \$240+\$150 = <u>\$390</u>	
	Week34	120	11	Reported shares increased (45 to 120): 75 shs @\$11/sh = \$825 <u>Adjusted estimated basis:</u> \$390+\$825 = <u>\$1215</u>	
	Week48	160	12	Reported shares increased (120 to 160): 40 shs @\$12/sh = \$480 <u>Adjusted estimated basis:</u> \$1215+\$480 = <u>\$1695</u>	
	Week60	200	10	Reported shares increased (160 to 200): 40 shs @\$10/sh = \$400 <u>Adjusted estimated basis:</u> \$1695+\$400 = <u>\$2095</u>	
	Week72	150	12	Reported shares decreased (200 to 150): Average cost of shares: \$2095/200 = \$10.48/sh; 50 shs @\$10.48/sh = \$524 <u>Adjusted estimated basis:</u> \$2095-\$524 = \$1571	
	Week80	200	14	Reported shares increased (150 to 200): +50 shs @\$14/sh = \$700 Adjusted estimated basis \$1571+\$700 = <u>\$2271</u>	
	Week104	200	16	No change in holdings	
\$2271 aggregate adjusted estimated basis / 200 shares = \$11.36 per share final estimated basis					
250 shares surrendered x \$11.36 per share final estimated basis = \$2840 deemed basis in surrendered shares					\$2840

Nominee2	Week4	Not listed on SPR	8	
	Week21	250	10	<u>Initial estimated basis:</u> 250 shares reported x \$10 vol wtd avg closing price per share = \$2500
	Week34	250	11	No change in holdings
	Week48	200	12	Reported shares decreased (250 to 200): Average cost of shares: \$2500/250 = \$10; 50 shs @\$10/sh = \$500 <u>Adjusted estimated basis:</u> \$2500-500 = \$2000
	Week60	200	10	No change in holdings
	Week72	300	12	Reported shares increased (200 to 300): +100 shs @\$12/sh = \$1200 <u>Adjusted estimated basis:</u> \$2000+\$1200 = \$3200
	Week80	300	14	No change in holdings
	Week104	150	16	Reported shares decreased (300 to 150): Average cost of shares: \$3200/300 = \$10.67; 150 shs @\$10.67/sh = \$1600 <u>Adjusted estimated basis:</u> \$3200-1600 = \$1600
	\$1600 aggregate adjusted estimated basis / 150 shares = \$10.67 per share final estimated basis			
175 shares surrendered x \$10.67 per share final estimated basis = \$1866 deemed basis in surrendered shares				\$1867

Nominee3	Week4	Not listed on SPR	8	
	Week21	Not listed on SPR	10	
	Week34	75	11	This is not Nominee3's first measuring date because Nominee3 does not appear on Target SPRs continuously to last measuring date
	Week48	75	12	
	Week60	Not listed on SPR	10	
	Week72	100	12	<u>Initial estimated basis:</u> 100 shares reported x \$12 vol wtd avg closing price per share = \$1200
	Week80	135	14	Reported shares increased (100 to 135): +35 shs @\$14/sh = \$490 <u>Adjusted estimated basis:</u> \$1200+490 = 1690
	Week104	150	16	Reported shares increased (135 to 150): +15 shs @\$16/sh = \$240 <u>Adjusted estimated basis:</u> \$1690+240 = 1930
\$1930 aggregate adjusted estimated basis / 150 shares = \$12.87 per share final estimated basis				
100 shares surrendered x \$12.87 per share final estimated basis = \$1287 deemed basis in surrendered shares				
				\$1287

Nominee4	Week4	50	8	
	Week21	50	10	
	Week34	100	11	
	Week48	Not listed on SPR	12	
	Week60	100	10	
	Week72	150	12	
	Week80	200	14	
	Week104	Not listed on SPR	16	No initial estimated basis can be determined (Nominee4 holds no shares on the SPR immediately preceding the transaction date)
\$0 aggregate adjusted estimated basis / 0 shares = \$0 per share final estimated basis				
100 shares surrendered x \$0 per share final estimated basis = \$0 deemed basis in surrendered shares				
\$0				
Nominee5	Week4	Not listed on SPR	\$8	
	Week21	Not listed on SPR	\$10	
	Week34	Not listed on SPR	\$11	
	Week48	50	\$12	
	Week60	50	\$10	
	Week72	Not listed on SPR	\$12	
	Week80	200	\$14	<u>Initial estimated basis:</u> 200 shares reported x \$14 vol wtd avg closing price per share = \$2800
	Week104	250	\$16	Reported shares increased (200 to 250): +50 shs @\$16/sh = \$800 <u>Adjusted estimated basis:</u> \$2800 + 800 = \$3600
\$3600 aggregate adjusted estimated basis / 250 shares = \$14.40 per share final estimated basis				
125 shares surrendered x \$14.40 per share final estimated basis = \$1800 deemed basis in surrendered shares				
\$1800				

Computation of Section 4.04 per share modeled basis (common shares):

Nominee shareholder	Per share final estimated basis	Surrendered shares	Deemed basis in surrendered shares
Nominee1	11.36	250	\$2840
Nominee2	10.67	175	\$1867
Nominee3	12.87	100	\$1287
Nominee4	0	100	\$0
Nominee5	14.40	125	\$1800
Total deemed basis in surrendered shares			\$7794
Total number of surrendered shares			750
Section 4.04 per share modeled basis			\$10.39
Section 4.04 per share modeled basis x 92% (100/109, the SPR ratio) = Allowable basis for each Section 4.04 Eligible Share			\$9.56

ALLOCATION OF ALLOWABLE BASIS TO SECTION 4.04 ELIGIBLE SHARES

Surrendering shareholder	Allowable basis per share	Surrendered Section 4.04 Eligible Shares	Aggregate allowable basis
Nominee1	\$9.56	200	\$1912
Nominee2	\$9.56	175	\$1673
Nominee3	\$9.56	0	\$0
Nominee4	\$9.56	100	\$956
Nominee5	\$9.56	125	\$1195

Notes:

Nominee1. As noted above, the basis of 50 of the 250 shares surrendered by Nominee1 was reported by Employee Plan1 and so was not determined under the Section 4.04 model.

Nominee3. As noted above, Acquiring did not satisfy the requirements to determine its basis in the shares surrendered by Nominee3 under this revenue procedure. Thus, there is no basis allowable under the model; however, Acquiring may establish its bases in those shares under such other method as agreed to by the Service.

SUMMARY
BASIS DETERMINED UNDER REVENUE PROCEDURE
(SPR DATA)

Surrendering shareholder	Applicable method	Allowable basis	Shares surrendered	Total allowable basis under revenue procedure
Preferred shares (100 outstanding):				
Officer	Cannot be established under this revenue procedure	TBD under procedures as agreed to by Service	20	\$0
Employee Plan1	Actual, as determined by Target's records	\$5/share (\$10 issue price reduced by \$5 §301(c)(2) distribution)	30	\$150
Employee Plan2	Actual, as determined by Target's records	\$36/share	50	\$1800
Total basis in preferred shares				\$1950
Common shares (1000 outstanding):				
Employee Plan1	As reported in survey, 4.01	\$12/share	50	\$600
Individual A	As reported in survey, 4.01	\$13/share	10	\$130
Individual B	4.03	\$9/share	10	\$90
Individual C	4.03	\$9/share \$12/share	25 25	\$525
Individual D	Cannot be established under this revenue procedure	TBD under procedures as agreed to by Service	50	\$0
Individual E	4.03	\$12/share	50	\$600
Director A	4.03	\$12/share	30	\$360
Private Placement	4.03	\$12/share	50	\$600
Nominee1	4.04	\$9.56/share	200	\$1912
Nominee2	4.04	\$9.56/share	175	\$1673
Nominee3	Cannot be established under this revenue procedure	TBD under procedures as agreed to by Service	100	\$0
Nominee4	4.04	\$9.56/share	100	\$956
Nominee5	4.04	\$9.56/share	125	\$1195
Total basis in common shares				\$8,641

Total number of shares (preferred plus common) surrendered	1100
Total basis in all shares	\$10,591

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 2011-36

SECTION 1. PURPOSE AND SCOPE

.01 This revenue procedure modifies section 6.07 of Rev. Proc. 2011-8, 2011-1 I.R.B. 237, to provide for a reduced user fee for applications for reinstatement of tax-exempt status filed by certain small organizations following automatic revocation of their tax-exempt status under section 6033(j) of the Internal Revenue Code.

.02 This revenue procedure is effective as of the date stated in section 5 and shall be effective only for applications made by certain small organizations that are post-marked no later than December 31, 2012.

.03 The reduced user fee described in section 3 of this revenue procedure shall apply only to small organizations that normally have annual gross receipts of not more than \$50,000 in their most recently completed taxable year and that are otherwise eligible for the transitional relief described in Notice 2011-43, this Bulletin.

.04 All organizations not eligible for the transitional relief described in Notice 2011-43 must refer to the user fee sched-

ule in section 6.07 of Rev. Proc. 2011-8 or its successor.

SECTION 2. BACKGROUND

The tax-exempt status of an organization that is described in section 6033(a)(1) or section 6033(i) of the Code and fails to file a required annual return or notice for three consecutive years is automatically revoked as of the date set for the filing of the third annual return or notice. I.R.C. § 6033(j)(1). An organization that has had its tax-exempt status automatically revoked and wishes to have its tax-exempt status reinstated is required to apply for reinstatement of tax-exempt status, even if it was not originally required to make such an application. I.R.C. § 6033(j)(2). Notice 2011-43 provides transitional relief for certain small organizations that have lost their tax-exempt status for failing to file required annual notices for taxable years beginning in 2007, 2008, and 2009. For more information about how to apply for transitional relief and reinstatement of tax-exempt status, see Notice 2011-43, this Bulletin.

SECTION 3. USER FEE

The amount of the user fee payable with respect to an application for reinstatement

of tax-exempt status postmarked no later than December 31, 2012 by an organization eligible for the transitional relief described in Notice 2011-43 is \$100.

SECTION 4. EFFECT ON OTHER REVENUE PROCEDURES

Section 6.07 of Rev. Proc. 2011-8 is modified only with respect to applications for reinstatement of tax-exempt status filed by organizations that qualify for the transitional relief described in Notice 2011-43.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective June 9, 2011.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Matthew Giuliano of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the TE/GE Customer Service office at (877) 829-5500 (a toll-free call).

Part IV. Items of General Interest

Publication of the Auto-Revocation List

Announcement 2011–35

The Internal Revenue Service is required to publish and maintain a list of

organizations that have had their federal tax-exempt status automatically revoked for failing to file an annual return or notice for three consecutive years pursuant to section 6033(j) of the Internal Revenue Code of 1986. As provided in Revenue Procedure 2011–33, the Internal Revenue

Service will publish this auto-revocation list on its website at *www.irs.gov*. The auto-revocation list will not appear in the Internal Revenue Bulletin.

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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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.

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