

## **HIGHLIGHTS OF THIS ISSUE**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### **INCOME TAX**

#### **Rev. Rul. 2011-25, page 695.**

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate.** For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for November 2011.

#### **REG-125949-10, page 712.**

Proposed regulations under section 471 of the Code provide rules relating to the retail inventory method of accounting. The regulations clarify the computation of ending inventory values under the retail inventory method and provide special rules for sales-based vendor allowances and for margin protection payments and similar vendor allowances.

#### **Notice 2011-87, page 699.**

This notice provides for the suspension of certain requirements under section 42 of the Code for low-income housing credit projects in order to provide emergency housing relief needed as a result of the devastation in the State of New York caused by either Hurricane Irene during the period of August 26, 2011, to September 5, 2011, or the remnants of Tropical Storm Lee during the period of September 7, 2011, to September 11, 2011.

#### **Rev. Proc. 2011-52, page 701.**

**Cost-of-living adjustments for 2012.** This procedure sets forth the 2012 cost-of-living adjustments to certain items due to inflation as required under various provisions of the Code and Service guidance.

### **EMPLOYEE PLANS**

#### **Notice 2011-86, page 698.**

This notice provides guidance on section 7528(b)(2) of the Code. Section 7528(b)(2) provides for exemption from the requirement to pay a user fee for certain applications to the Service for determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership (ESOP) plans. This notice explains how to determine, for purposes of eligibility for exemption from the user fee requirement, if such an application has been filed within a remedial amendment period with respect to the plan beginning within the plan's first five plan years. The guidance in this notice generally pertains to such applications that are filed with the Service after January 31, 2011. Notice 2002-1 amplified.

### **EXEMPT ORGANIZATIONS**

#### **Announcement 2011-70, page 715.**

The IRS has revoked its determination that Carib News Foundation of New York, NY; Caring and Sharing, Inc., of Kansas City, MO; Center for AIDS Prevention of Beverly Hills, CA; Ezer Akeres Habais, Inc., of Brooklyn, NY; National Carbon Offset Coalition of Butte, MT; Nazarene Ministry of Help of Portland, OR; Thumpers Therapeutic Center of Milwaukee, OR; Tradewinds Foundation, Inc., of New Hartford, NY; Texas Team Sports of San Antonio, TX; and United Homeless Organization, Inc., of Bronx, PA, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

(Continued on the next page)

Finding Lists begin on page ii.



## **ESTATE TAX**

### **Rev. Proc. 2011-52, page 701.**

**Cost-of-living adjustments for 2012.** This procedure sets forth the 2012 cost-of-living adjustments to certain items due to inflation as required under various provisions of the Code and Service guidance.

## **GIFT TAX**

### **Rev. Proc. 2011-52, page 701.**

**Cost-of-living adjustments for 2012.** This procedure sets forth the 2012 cost-of-living adjustments to certain items due to inflation as required under various provisions of the Code and Service guidance.

## **EXCISE TAX**

### **Rev. Proc. 2011-52, page 701.**

**Cost-of-living adjustments for 2012.** This procedure sets forth the 2012 cost-of-living adjustments to certain items due to inflation as required under various provisions of the Code and Service guidance.

## **ADMINISTRATIVE**

### **REG-140280-09, page 709.**

Proposed regulations under section 6695 of the Code would modify existing regulations related to the tax return preparer penalties. A public hearing is scheduled for November 7, 2011.

### **Rev. Proc. 2011-52, page 701.**

**Cost-of-living adjustments for 2012.** This procedure sets forth the 2012 cost-of-living adjustments to certain items due to inflation as required under various provisions of the Code and Service guidance.

# The IRS Mission

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

force the law with integrity and fairness to all.

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

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

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

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

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

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

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

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

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

## Section 1.—Tax Imposed

The Service provides inflation adjustments to the tax rate tables for individuals, trusts, and estates for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## Section 23.—Adoption Expenses

The Service provides inflation adjustments to the adoption credit allowed for the adoption of a child for taxable years beginning in 2012. The Service also provides inflation adjustments to the value used in calculating the modified adjusted gross income limitations used to determine the amount of adoption credit that is allowed in taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## Section 24.—Child Tax Credit

The Service provides an inflation adjustment for the value used in determining the amount of credit that may be refundable for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## Section 25A.—Hope and Lifetime Learning Credits

The Service provides an inflation adjustment for the amount of qualified tuition and related expenses that are taken into account in determining the amount of the Hope Scholarship Credit for taxable years beginning in 2012. Also for taxable years beginning in 2012, the Service provides an inflation adjustment for the amount of a taxpayer's modified adjusted gross income that is taken into account in determining the reduction in the amount of the Hope Scholarship and Lifetime Learning Credits otherwise available. See Rev. Proc. 2011-52, page 701.

## Section 32.—Earned Income

The Service provides inflation adjustments to the limitations on the earned income credit for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2011. See Rev. Rul. 2011-25, page 695.

The Service provides inflation adjustments to the amounts used to calculate the State housing credit ceiling used in determining the low-income housing credit, and the per low-income unit qualified basis amount, for calendar year 2012. See Rev. Proc. 2011-52, page 701.

## Section 59.—Other Definitions and Special Rules for the Alternative Minimum Tax

The Service provides an inflation adjustment to the exemption amount used in computing the alternative minimum tax for a minor child subject to the "kiddie tax" for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## Section 62.—Adjusted Gross Income Defined

The Service provides inflation adjustments to the amounts an eligible employer may pay in calendar year 2012 to certain welders and heavy equipment mechanics for rig-related expenses that are deemed substantiated under an accountable plan if paid in accordance with Rev. Proc. 2002-41, 2002-1 C.B. 1098. See Rev. Proc. 2011-52, page 701.

## Section 63.—Taxable Income Defined

The Service provides inflation adjustments to the standard deduction amounts (including the limitation in the case of certain dependents, and the additional standard deduction for the aged or blind) for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## Section 132.—Certain Fringe Benefits

The Service provides inflation adjustments to the limitations on the exclusion of income for a qualified transportation fringe benefit for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## Section 135.—Income from United States Savings Bonds Used to Pay Higher Education Tuition and Fees

The Service provides inflation adjustments to the limitations on the exclusion of income from United States savings bonds for taxpayers who pay qualified

higher education expenses for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## Section 137.—Adoption Assistance Programs

The Service provides inflation adjustments to the maximum amount that can be excluded from an employee's gross income in connection with a qualified adoption assistance program for taxable years beginning in 2012. The Service also provides inflation adjustments to the amount used to calculate the modified adjusted gross income limitations used to determine the amount that can be excluded from an employee's gross income for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## Section 146.—Volume Cap

The Service provides inflation adjustments to the amount used to determine the State ceiling for the volume cap of private activity bonds for calendar year 2012. See Rev. Proc. 2011-52, page 701.

## Section 147.—Other Requirements Applicable to Certain Private Activity Bonds

The Service provides an inflation adjustment to the loan limit amount on agricultural bonds for first-time farmers for calendar year 2012. See Rev. Proc. 2011-52, page 701.

## Section 148.—Arbitrage

*26 CFR 1.148-5: Yield and valuation of investments.*

The Service provides inflation adjustments for determining in the calendar year 2012 whether a broker's commission or similar fee with respect to the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable. The Service provides an inflation adjustment to the computation credit determined under permission to rely on section 1.148-3(d)(4) of the proposed Income Tax Regulations for bond years ending in 2012. See Rev. Proc. 2011-52, page 701.

## Section 151.—Allowance of Deductions for Personal Exemptions

The Service provides an inflation adjustment to the personal exemption amount for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## **Section 179.—Election to Expense Certain Depreciable Assets**

The Service provides an inflation adjustment for the cost of section 179 property a taxpayer elects to treat as an expense for taxable years beginning in 2012. Also for taxable years beginning in 2012, the Service provides an inflation adjustment for the amount used in calculating the phase-out of the section 179 deduction. See Rev. Proc. 2011-52, page 701.

## **Section 213.—Medical, Dental, etc., Expenses**

The Service provides inflation adjustments to the limitations on the amount of eligible long-term care premiums includible in the term “medical care” for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## **Section 220.—Archer MSAs**

The Service provides inflation adjustments to the amounts used to determine whether a health plan is a “high deductible health plan” for purposes of determining whether an individual is eligible for a deduction for cash paid to a medical savings account for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## **Section 221.—Interest on Education Loans**

The Service provides inflation adjustments to the income limitations used to determine the allowable deductions for interest on education loans for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## **Section 280G.—Golden Parachute Payments**

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2011. See Rev. Rul. 2011-25, page 695.

## **Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change**

The adjusted applicable federal long-term rate is set forth for the month of November 2011. See Rev. Rul. 2011-25, page 695.

## **Section 412.—Minimum Funding Standards**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2011. See Rev. Rul. 2011-25, page 695.

## **Section 467.—Certain Payments for the Use of Property or Services**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2011. See Rev. Rul. 2011-25, page 695.

## **Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2011. See Rev. Rul. 2011-25, page 695.

## **Section 482.—Allocation of Income and Deductions Among Taxpayers**

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2011. See Rev. Rul. 2011-25, page 695.

## **Section 483.—Interest on Certain Deferred Payments**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2011. See Rev. Rul. 2011-25, page 695.

## **Section 512.—Unrelated Business Taxable Income**

The Service provides an inflation adjustment to the maximum amount of annual dues that can be paid to certain agricultural or horticultural organizations without any portion being treated as unrelated trade or business income by reason of any benefits or privileges available to members for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## **Section 513.—Unrelated Trade or Business**

The Service provides an inflation adjustment to the maximum cost of a “low cost article” for taxable years beginning in 2012. Funds raised through

a charity’s distribution of “low cost articles” will not be treated as unrelated business income to the charity. See Rev. Proc. 2011-52, page 701.

## **Section 642.—Special Rules for Credits and Deductions**

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2011. See Rev. Rul. 2011-25, page 695.

## **Section 807.—Rules for Certain Reserves**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2011. See Rev. Rul. 2011-25, page 695.

## **Section 846.—Discounted Unpaid Losses Defined**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2011. See Rev. Rul. 2011-25, page 695.

## **Section 877.—Expatriation to Avoid Tax**

The Service provides an inflation adjustment to the amount used for calendar year 2012 to determine whether an individual’s loss of United States citizenship had the avoidance of United States tax as one of its principal purposes. See Rev. Proc. 2011-52, page 701.

## **Section 877A.—Tax Responsibilities of Expatriation**

The Service provides an inflation adjustment to the amount that reduces the amount that would be includible in the gross income of a covered expatriate for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## **Section 911.—Citizens or Residents of the United States Living Abroad**

The Service provides an inflation adjustment to the amount of foreign earned income that may be excluded from gross income for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

## Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate.** For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for November 2011.

### Rev. Rul. 2011-25

This revenue ruling provides various prescribed rates for federal income tax

purposes for November 2011 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current

month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2011-25 TABLE 1  
Applicable Federal Rates (AFR) for November 2011

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.19%	.19%	.19%	.19%
110% AFR	.21%	.21%	.21%	.21%
120% AFR	.23%	.23%	.23%	.23%
130% AFR	.25%	.25%	.25%	.25%
<i>Mid-term</i>				
AFR	1.20%	1.20%	1.20%	1.20%
110% AFR	1.32%	1.32%	1.32%	1.32%
120% AFR	1.45%	1.44%	1.44%	1.44%
130% AFR	1.57%	1.56%	1.56%	1.55%
150% AFR	1.81%	1.80%	1.80%	1.79%
175% AFR	2.11%	2.10%	2.09%	2.09%
<i>Long-term</i>				
AFR	2.67%	2.65%	2.64%	2.64%
110% AFR	2.94%	2.92%	2.91%	2.90%
120% AFR	3.21%	3.18%	3.17%	3.16%
130% AFR	3.48%	3.45%	3.44%	3.43%

REV. RUL. 2011-25 TABLE 2  
Adjusted AFR for November 2011

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.41%	.41%	.41%	.41%
Mid-term adjusted AFR	1.38%	1.38%	1.38%	1.38%
Long-term adjusted AFR	3.41%	3.38%	3.37%	3.36%

REV. RUL. 2011-25 TABLE 3  
Rates Under Section 382 for November 2011

Adjusted federal long-term rate for the current month	3.41%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	3.77%

REV. RUL. 2011-25 TABLE 4  
Appropriate Percentages Under Section 42(b)(1) for November 2011

Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.44%
Appropriate percentage for the 30% present value low-income housing credit	3.19%

REV. RUL. 2011-25 TABLE 5  
Rate Under Section 7520 for November 2011

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	1.4%
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### Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2011. See Rev. Rul. 2011-25, page 695.

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### Section 2010.—Unified Credit Against Estate Tax

The Service provides an inflation adjustment to the amount of the unified credit against estate tax for the estate of a decedent dying in calendar year 2012. See Rev. Proc. 2011-52, page 701.

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### Section 2032A.—Valuation of Certain Farm, etc., Real Property

The Service provides an inflation adjustment to the maximum amount by which the value of certain farm and other qualified real property included in a decedent's gross estate may be decreased for purposes of valuing the estate of a decedent dying in calendar year 2012. See Rev. Proc. 2011-52, page 701.

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### Section 2503.—Taxable Gifts

The Service provides an inflation adjustment to the amount of gifts that may be made to a person in a calendar year without including the amount in taxable gifts for calendar year 2012. See Rev. Proc. 2011-52, page 701.

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### Section 2523.—Gift to Spouse

The Service provides an inflation adjustment to the amount of gifts that may be made in a calendar year to a spouse who is not a citizen of the United States without including the amount in taxable gifts for calendar year 2012. See Rev. Proc. 2011-52, page 701.

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### Section 4161.—Imposition of Tax

The Service provides an inflation adjustment to the amount of excise tax imposed for calendar year 2012 on the first sale by a manufacturer, producer, or importer of any shaft of a type used in the manufacture of certain arrows. See Rev. Proc. 2011-52, page 701.

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### Section 4261.—Imposition of Tax

The Service provides inflation adjustments for excise taxes on domestic and international passenger air

transportation for calendar year 2012. See Rev. Proc. 2011-52, page 701.

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### Section 6033.—Returns by Exempt Organizations

The Service provides an inflation adjustment to the amount of dues certain exempt organizations with nondeductible lobbying expenditures can charge and still be excepted from reporting requirements for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

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### Section 6039F.—Notice of Large Gifts Received From Foreign Persons

The Service provides an inflation adjustment to the amount of gifts received in a taxable year from foreign persons that triggers a reporting requirement for a United States person for taxable years beginning in 2012. See Rev. Proc. 2011-52, page 701.

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### Section 6323.—Validity and Priority Against Certain Persons

The Service provides inflation adjustments for calendar year 2012 to (1) the maximum amount of a casual sale of personal property below which a federal tax lien will not be valid against a purchaser of the property, and (2) the maximum amount of a contract for the repair or improvement of certain residential



property at or below which a federal tax lien will not be valid against a mechanic's lienor. See Rev. Proc. 2011-52, page 701.

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### **Section 6334.—Property Exempt From Levy**

The Service provides inflation adjustments to the value of certain property exempt from levy (fuel, provisions, furniture, household personal effects, arms for personal use, livestock, poultry, and books and tools of a trade, business, or profession) for calendar year 2012. See Rev. Proc. 2011-52, page 701.

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### **Section 6601.—Interest on Underpayment, Nonpayment, or Extension of Time for Payment, of Tax**

The Service provides an inflation adjustment to the amount used to determine the amount of interest charged on a certain portion of the estate tax payable

in installments for the estate of a decedent dying in calendar year 2012. See Rev. Proc. 2011-52, page 701.

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### **Section 7430.—Awarding of Costs and Certain Fees**

The Service provides an inflation adjustment to the hourly limit on attorney fees incurred in calendar year 2012 that may be awarded in a judgment or settlement of an administrative or judicial proceeding concerning the determination, collection, or refund of tax, interest, or penalty. See Rev. Proc. 2011-52, page 701.

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### **Section 7520.—Valuation Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2011. See Rev. Rul. 2011-25, page 695.

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### **Section 7702B.—Treatment of Qualified Long-Term Care Insurance**

The Service provides an inflation adjustment to the stated dollar amount for calendar year 2012 of the *per diem* limitation regarding periodic payments received under qualified long-term care insurance contract or periodic payments received under a life insurance contract that are treated as paid by reason of the death of a chronically ill individual. See Rev. Proc. 2011-52, page 701.

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### **Section 7872.—Treatment of Loans With Below-Market Interest Rates**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2011. See Rev. Rul. 2011-25, page 695.

## Part III. Administrative, Procedural, and Miscellaneous

### Eligibility for Exemption from User Fee Requirement for Employee Plans Determination Letter Applications Filed After January 31, 2011

#### Notice 2011-86

##### I. Purpose

This notice provides guidance on § 7528(b)(2) of the Internal Revenue Code. Section 7528(b)(2) provides for exemption from the requirement to pay a user fee for certain applications to the Service for determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership (ESOP) plans. The guidance in this notice generally pertains to such applications that are filed with the Service after January 31, 2011. This notice amplifies Notice 2002-1, 2002-1 C.B. 283, by explaining how to determine, for purposes of eligibility for exemption from the user fee requirement, if such an application has been filed within a remedial amendment period with respect to the plan beginning within the plan's first five plan years.

##### II. Background

Section 7528 directs the Secretary of the Treasury to establish a program requiring the payment of a user fee for requests to the Service for ruling letters, opinion letters, determination letters, and other similar requests. Rev. Proc. 2011-8, 2011-1 I.R.B. 237, as corrected by Announcement 2011-8, 2011-5 I.R.B. 446, contains the procedures under the Service's user fee program with respect to requests involving employee plans and exempt organizations.

Section 7528(b)(2)(A) provides that the Secretary shall provide for such exemptions from the user fee requirement (and reduced fees) as the Secretary deems appropriate. Section 7528(b)(2)(B) and (C) provides that an application for a determination letter on the qualified status of a pension, profit-sharing, stock bonus, annuity, or ESOP plan or the exempt status of any trust which is part of the plan shall be exempt from the user fee requirement

if the plan is maintained solely by one or more eligible employers (within the meaning of § 7528(b)(2)(C)(ii)) and the application is filed by the later of the last day of the fifth plan year the plan is in existence or the last day of any remedial amendment period with respect to the plan beginning within the first five plan years.

Section 7528 was added to the Code in 2003, effective for requests made after October 1, 2003. Provisions identical to § 7528(b)(2)(B) and (C) were set forth in section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 (EGTRRA), and applied to requests made after December 31, 2001 and before the effective date of § 7528. Notice 2002-1, as amplified by Notice 2003-49, 2003-2 C.B. 294, provides guidance on section 620 of EGTRRA, including guidance on who is an eligible employer, when a plan is in existence, the types of determination letter applications that are eligible for exemption from the user fee requirement, and when a plan's EGTRRA remedial amendment period begins for purposes of determining if a determination letter application is eligible for exemption from the user fee requirement. The guidance in Notice 2002-1, as amplified by Notice 2003-49, applies to § 7528(b)(2)(B) and (C), as well as to section 620 of EGTRRA, and continues to be effective, as further amplified by this notice.

Rev. Proc. 2007-44, 2007-2 C.B. 54, provides for a system of cyclical remedial amendment periods and staggered submission periods for determination letter applications for employee plans. Under the system set forth in Rev. Proc. 2007-44, applications for determination letters for a plan are generally not submitted more frequently than once every five or six years, depending on whether the plan is (1) individually designed and subject to a 5-year remedial amendment cycle or (2) pre-approved and subject to a 6-year cycle. Any remedial amendment period with respect to a plan that would otherwise expire before the end of the plan's current 5- or 6-year cycle (and after the end of the plan's preceding cycle) is extended to the end of the plan's current cycle.

For example, the current 5-year remedial amendment cycle for an individually designed Cycle A plan (as defined in section 9 of Rev. Proc. 2007-44) ends on January 31, 2012, and the one-year determination letter submission period for the plan under the current cycle runs from February 1, 2011 to January 31, 2012. Any remedial amendment period with respect to the plan that would otherwise expire after January 31, 2007 and before January 31, 2012 is extended to January 31, 2012. The current 5-year remedial amendment cycles for individually designed Cycle B, C, D, and E plans end on January 31, 2013, 2014, 2015, and 2016, respectively. Similar remedial amendment cycle rules apply to pre-approved plans, except that the cycles are six years in length and are based on whether a plan is a defined contribution or a defined benefit plan.

##### III. Remedial Amendment Period Beginning Within First Five Plan Years

An application for a determination letter does not meet the requirements in § 7528(b)(2)(B) and (C) for exemption from the user fee requirement if the application is not submitted to the Service by the later of the last day of the fifth plan year the plan is in existence or the last day of any remedial amendment period with respect to the plan beginning within the first five plan years. Ascertaining whether a particular application satisfies this requirement would require consideration of the effective dates with respect to the plan of changes in law and published guidance, the adoption and effective dates of the plan and amendments to the plan, and the plan's current remedial amendment cycle. A separate analysis could be required for every application that is otherwise eligible for exemption from the user fee requirement.

In order to simplify the process for establishing whether a user fee is required to be paid with a determination letter application for a plan, for purposes of § 7528(b)(2), the Service will treat an application as having been filed by the last day of a remedial amendment period with respect to the plan beginning within the first five plan years if both of

the following conditions are met: (1) the application is filed with the Service by the last day of the submission period for the plan's current remedial amendment cycle, and (2) the plan is first in existence no earlier than January 1 of the tenth calendar year immediately preceding the year in which the submission period for the plan's current remedial amendment cycle begins. For example, for purposes of § 7528(b)(2), the Service will treat an application for a determination letter for a Cycle A plan as filed by the last day of a remedial amendment period with respect to the plan beginning within the first five plan years if the application is filed with the Service by January 31, 2012 (*i.e.*, the last day of the submission period for the plan's current remedial amendment cycle) and the plan is first in existence no earlier than January 1, 2001 (*i.e.*, January 1 of the tenth calendar year immediately preceding 2011, the year in which the submission period for the plan's current remedial amendment cycle begins). An application for a determination letter for a Cycle B plan will be treated as filed by the last day of a remedial amendment period with respect to the plan beginning within the first five plan years if the application is filed with the Service by January 31, 2013, and the plan is first in existence no earlier than January 1, 2002.

There may be certain situations in which an application that is filed by the last day of a remedial amendment period with respect to the plan beginning within the first five plan years would nevertheless not be treated as such under the rule described in the preceding paragraph (*i.e.*, where a remedial amendment period beginning within the first five plan years ends on the last day of a submission period that begins more than ten years after the year in which the plan is first in existence). In such cases, where the other requirements for exemption from user fees are also met, the applicant should not include payment of a user fee with the application but should explain in a cover letter how the application meets the requirements for exemption. If the Service determines that the application is not exempt, the applicant will be asked to submit the required user fee.

The preceding rules apply to all applications for determination letters that are filed with the Service after

January 31, 2011, other than applications filed by April 30, 2012 for EGTRRA determination letters for defined benefit plans that are eligible for the 6-year EGTRRA remedial amendment cycle ending on April 30, 2012. Notice 2003-49 explains how to determine eligibility for exemption from the user fee requirement for a determination letter application filed within a plan's EGTRRA remedial amendment period. Notice 2003-49 applies to applications for determination letters for defined benefit plans that are eligible for the 6-year EGTRRA remedial amendment cycle ending on April 30, 2012, regardless of whether such an application is filed on Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans*, or Form 5300, *Application for Determination for Employee Benefit Plan*.

#### IV. Effect on Other Documents

Notice 2002-1 is amplified.

#### V. Effective Date

This notice is effective with respect to applications for determination letters on the qualified status of employee plans that are filed with the Service after January 31, 2011.

#### DRAFTING INFORMATION

The principal drafter of this notice is James Flannery of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) or Mr. Flannery at [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov).

## **State of New York Low-Income Housing Credit Disaster Relief Notice 2011-87**

The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects to provide emergency housing relief needed as a result of the devastation in the State of New

York caused by either Hurricane Irene during the period of August 26, 2011 to September 5, 2011, or the remnants of Tropical Storm Lee during the period of September 7, 2011 to September 11, 2011. This relief is being granted pursuant to the Service's authority under § 42(n) and § 1.42-13(a) of the Income Tax Regulations.

#### BACKGROUND

On August 31, 2011, and September 13, 2011, the President declared major disasters for the State of New York. The declarations were made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* Subsequently, the Federal Emergency Management Agency (FEMA) designated jurisdictions for Individual Assistance. The State of New York has requested that the Service allow owners of low-income housing credit projects to provide temporary housing in vacant units to individuals who resided in jurisdictions designated for Individual Assistance in the State of New York and who have been displaced because their residences were destroyed or damaged as a result of the devastation caused by Hurricane Irene or the remnants of Tropical Storm Lee. Based upon this request and because of the widespread damage to housing caused by Hurricane Irene and the remnants of Tropical Storm Lee, the Service has determined that the New York State Homes and Community Renewal Agency (Agency) may provide approval to project owners to provide temporary emergency housing for displaced individuals in accordance with this notice.

#### I. SUSPENSION OF INCOME LIMITATIONS

The Service has determined that it is appropriate to temporarily suspend certain income limitation requirements under § 42 for certain qualified low-income housing projects. The suspension will apply to low-income housing projects approved by the Agency, in which vacant units are rented to displaced individuals. The Agency will determine the appropriate period of temporary housing for each project, not to extend beyond October 31, 2012 (temporary housing period).

## II. STATUS OF UNITS

### A. Units in the first year of the credit period

A displaced individual temporarily occupying a unit during the first year of the credit period under § 42(f)(1) will be deemed a qualified low-income tenant for purposes of determining the project's qualified basis under § 42(c)(1), and for meeting the project's 20–50 test or 40–60 test as elected by the project owner under § 42(g)(1). After the end of the temporary housing period established by the Agency (not to extend beyond October 31, 2012), a displaced individual will no longer be deemed a qualified low-income tenant.

### B. Vacant units after the first year of the credit period

During the temporary housing period established by the Agency, the status of a vacant unit (that is, market-rate or low-income for purposes of § 42 or never previously occupied) after the first year of the credit period that becomes temporarily occupied by a displaced individual remains the same as the unit's status before the displaced individual moves in. Displaced individuals temporarily occupying vacant units will not be treated as low-income tenants under § 42(i)(3)(A)(ii). However, even if it houses a displaced individual, a low-income or market rate unit that was vacant before the effective date of this notice will continue to be treated as a vacant low-income or market rate unit. Similarly, a unit that was never previously occupied before the effective date of this notice will continue to be treated as a unit that has never been previously occupied even if it houses a displaced individual. Thus, the fact that a vacant unit becomes occupied by a displaced individual will not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis, nor will it affect the 20–50 test or 40–60 test of § 42(g)(1). If the income of occupants in low-income units exceeds 140 percent of the applicable income limitation, the temporary occupancy of a unit by a displaced individual will not cause application of the available unit rule under § 42(g)(2)(D)(ii). In addition, the project owner is not required during the temporary

housing period to make attempts to rent to low-income individuals the low-income units that house displaced individuals.

## III. SUSPENSION OF NON-TRANSIENT REQUIREMENTS

The non-transient use requirement of § 42(i)(3)(B)(i) shall not apply to any unit providing temporary housing to a displaced individual during the temporary housing period determined by the Agency in accordance with section I of this notice.

## IV. OTHER REQUIREMENTS

All other rules and requirements of § 42 will continue to apply during the temporary housing period established by the Agency. After the end of the temporary housing period, the applicable income limitations contained in § 42(g)(1), the available unit rule under § 42(g)(2)(D)(ii), the nontransient requirement of § 42(i)(3)(B)(i), and the requirement to make reasonable attempts to rent vacant units to low-income individuals shall resume. If a project owner offers to rent a unit to a displaced individual after the end of the temporary housing period, the displaced individual must be certified under the requirements of § 42(i)(3)(A)(ii) and § 1.42–5(b) and (c) to be a qualified low-income tenant. To qualify for the relief in this notice, the project owner must additionally meet all of the following requirements:

### (1) Major Disaster Area

In the case of an individual displaced by the devastation caused by Hurricane Irene, the displaced individual must have resided in a New York jurisdiction designated for Individual Assistance by FEMA as a result of the devastation in the State of New York caused by Hurricane Irene during the period of August 26, 2011 to September 5, 2011.

In the case of an individual displaced by the devastation caused by the remnants of Tropical Storm Lee, the displaced individual must have resided in a New York jurisdiction designated for Individual Assistance by FEMA as a result of the devastation in the State of New York caused by the remnants of Tropical Storm Lee during the period of September 7, 2011 to September 11, 2011.

### (2) Approval of the Agency

The project owner must obtain approval from the Agency for the relief described in this notice. The Agency will determine the appropriate period of temporary housing for each project, not to extend beyond October 31, 2012.

### (3) Certifications and Recordkeeping

To comply with the requirements of § 1.42–5, project owners are required to maintain and certify certain information concerning each displaced individual temporarily housed in the project, specifically the following: name, address of damaged residence, social security number, and a statement signed under penalties of perjury by the displaced individual that, because of damage to the individual's residence in a New York jurisdiction designated for Individual Assistance by FEMA as a result of the devastation caused in the State of New York by either Hurricane Irene during the period of August 26, 2011 to September 5, 2011, or the remnants of Tropical Storm Lee during the period of September 7, 2011 to September 11, 2011, as applicable, the individual requires temporary housing. The owner must notify the Agency that vacant units are available for rent to displaced individuals.

The owner must also certify the date the displaced individual began temporary occupancy and the date the project will discontinue providing temporary housing as established by the Agency. The certifications and recordkeeping for displaced individuals must be maintained as part of the annual compliance monitoring process with the Agency.

### (4) Rent Restrictions

Rents for the low-income units that house displaced individuals must not exceed the existing rent-restricted rates for the low-income units established under § 42(g)(2).

### (5) Protection of Existing Tenants

Existing tenants in occupied low-income units cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.

## EFFECTIVE DATES

This notice is effective August 31, 2011 (the date of the President's major disaster declaration) for devastation caused by Hurricane Irene in the State of New York during the period of August 26, 2011 to

September 5, 2011. This notice is effective September 13, 2011 (the date of the President's major disaster declaration) for devastation caused by the remnants of Tropical Storm Lee in the State of New York during the period of September 7, 2011 to September 11, 2011.

#### PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2220.

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

The collection of information in this notice is in the section titled "OTHER REQUIREMENTS" under "(3) Certifications

and Recordkeeping." This information is required to enable the Service to verify whether individuals are displaced as a result of the devastation caused in the State of New York by either Hurricane Irene during the period of August 26, 2011 to September 5, 2011, or the remnants of Tropical Storm Lee during the period of September 7, 2011 to September 11, 2011, and thus warrant temporary housing in vacant low-income housing units. The collection of information is required to obtain a benefit. The likely respondents are individuals and businesses.

The estimated total annual recordkeeping burden is 300 hours.

The estimated annual burden per recordkeeper is approximately 15 minutes. The estimated number of recordkeepers is 1200.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue

law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### DRAFTING INFORMATION

The principal author of this notice is David Selig of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Mr. Selig at (202) 622-3040 (not a toll-free call).

*26 CFR 601.602: Tax forms and instructions. (Also Part I, §§ 1, 23, 24, 25A, 32, 42, 59, 62, 63, 132, 135, 137, 146, 147, 148, 151, 179, 213, 220, 221, 512, 513, 877, 877A, 911, 2010, 2032A, 2503, 2523, 4161, 4261, 6033, 6039F, 6323, 6334, 6601, 7430, 7702B; 1.148-5.)*

#### Rev. Proc. 2011-52

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#### SECTION 5. DRAFTING INFORMATION

##### SECTION 1. PURPOSE

This revenue procedure sets forth inflation adjusted items for 2012.

##### SECTION 2. CHANGES

.01 Sections 10909(a)(1) and (b) of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (PPACA), and § 101(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, H.R. 4853, Pub. L. No. 111-312, 124 Stat. 3296 (TRUIRJCA), temporarily designated § 23 of the Code as § 36C. As designated, § 36C provides a temporary refundable adoption credit, and an

increase in the maximum adoption credit from \$10,000 (as adjusted for inflation under former § 23(h)) to \$13,170, for taxable years beginning after December 31, 2009, and before January 1, 2012. For taxable years beginning after December 31, 2011, these temporary changes no longer apply. Accordingly, for taxable years beginning after December 31, 2011, the credit is redesignated as § 23 and is no longer refundable. In addition, the maximum adoption credit is \$10,000, as adjusted for inflation. (See section 3.03 of this revenue procedure.)

.02 Section 1151 of the American Recovery and Reinvestment Tax Act of 2009, Tit. I of Div. B of Pub. L.

No. 111-5, 123 Stat. 115, and § 727(a) of TRUIRJCA amended § 132(f)(2) of the Code to temporarily increase the amount excludable from gross income for certain employer-provided transportation fringe benefits. For months beginning after February 17, 2009, and before January 1, 2012, the monthly limitation under § 132(f)(2)(A) for transportation in a commuter highway vehicle and any transit pass is the same as the amount in effect under § 132(f)(2)(B) for qualified parking. For months beginning after December 31, 2011, the temporary increase no longer applies. Accordingly, the monthly limitation under § 132(f)(2)(A) is \$100, as adjusted for

inflation. (See section 3.12 of this revenue procedure.)

.03 Section 10909(a)(2) of PPACA and § 101(a) of TRUIRJCA amended § 137(a)(2) and (b)(1) of the Code to temporarily increase the maximum adoption assistance exclusion from \$10,000 (as adjusted for inflation) to \$13,170, for taxable years beginning after December 31, 2009, and before January 1, 2012. Accordingly, for taxable years beginning after December 31, 2011, the maximum exclusion is \$10,000, as adjusted for inflation. (See section 3.14 of this revenue procedure.)

.04 Section 402 of TRUIRJCA amended § 179(b)(1) and (2) of the Code to provide that the dollar limitation for the aggregate cost of § 179 property that a taxpayer may elect to expense is \$125,000, and that dollar amount is reduced by the amount the cost of all § 179 property placed into service during the taxable year exceeds \$500,000. For taxable years

beginning in 2012, these amounts are adjusted for inflation. Accordingly, these amounts are included in this revenue procedure. (See section 3.20 of this revenue procedure.)

.05 Section 303 of TRUIRJCA amended § 2010(c) of the Code to provide that the basic exclusion amount for determining the amount of the unified credit against estate tax for estates of decedents dying after December 31, 2009, is \$5,000,000. For taxable years beginning after December 31, 2011, this \$5,000,000 amount is adjusted for inflation. Accordingly, this amount is included in this revenue procedure. (See section 3.29 of this revenue procedure.)

.06 Section 202(b)(1) of the Surface and Air Transportation Programs Extension Act of 2011, Pub. L. No. 112-30, 125 Stat. 342, amended § 4261(j)(1)(A)(ii) of the Code (which governs the period of applicability of § 4261(b)(1), (c)(1), and

(c)(3)). The effect of that amendment is to temporarily extend the passenger air transportation excise taxes of \$3.00 for domestic travel, \$12.00 for international travel, and \$6.00 for departures beginning or ending in Alaska or Hawaii. These excise taxes apply to transportation taken through January 31, 2012. In addition, these excise taxes apply to amounts paid on or before January 31, 2012, for transportation taken after that date. The \$3.00, \$12.00, and \$6.00 amounts are adjusted for inflation. Accordingly, these amounts are included in this revenue procedure. (See section 3.33 of this revenue procedure.)

### SECTION 3. 2012 ADJUSTED ITEMS

.01 *Tax Rate Tables.* For taxable years beginning in 2012, the tax rate tables under § 1 are as follows:

TABLE 1 — Section 1(a) — Married Individuals Filing Joint Returns and Surviving Spouses

<u>If Taxable Income Is:</u>	<u>The Tax Is:</u>
Not over \$17,400	10% of the taxable income
Over \$17,400 but not over \$70,700	\$1,740 plus 15% of the excess over \$17,400
Over \$70,700 but not over \$142,700	\$9,735 plus 25% of the excess over \$70,700
Over \$142,700 but not over \$217,450	\$27,735 plus 28% of the excess over \$142,700
Over \$217,450 but not over \$388,350	\$48,665 plus 33% of the excess over \$217,450
Over \$388,350	\$105,062 plus 35% of the excess over \$388,350

TABLE 2 — Section 1(b) — Heads of Households

<u>If Taxable Income Is:</u>	<u>The Tax Is:</u>
Not over \$12,400	10% of the taxable income
Over \$12,400 but not over \$47,350	\$1,240 plus 15% of the excess over \$12,400
Over \$47,350 but not over \$122,300	\$6,482.50 plus 25% of the excess over \$47,350
Over \$122,300 but not over \$198,050	\$25,220 plus 28% of the excess over \$122,300

Over \$198,050 but not over \$388,350	\$46,430 plus 33% of the excess over \$198,050
Over \$388,350	\$109,229 plus 35% of the excess over \$388,350

TABLE 3 — Section 1(c) — Unmarried Individuals (other than Surviving Spouses and Heads of Households)

<u>If Taxable Income Is:</u>	<u>The Tax Is:</u>
Not over \$8,700	10% of the taxable income
Over \$8,700 but not over \$35,350	\$870 plus 15% of the excess over \$8,700
Over \$35,350 but not over \$85,650	\$4,867.50 plus 25% of the excess over \$35,350
Over \$85,650 but not over \$178,650	\$17,442.50 plus 28% of the excess over \$85,650
Over \$178,650 but not over \$388,350	\$43,482.50 plus 33% of the excess over \$178,650
Over \$388,350	\$112,683.50 plus 35% of the excess over \$388,350

TABLE 4 — Section 1(d) — Married Individuals Filing Separate Returns

<u>If Taxable Income Is:</u>	<u>The Tax Is:</u>
Not over \$8,700	10% of the taxable income
Over \$8,700 but not over \$35,350	\$870 plus 15% of the excess over \$8,700
Over \$35,350 but not over \$71,350	\$4,867.50 plus 25% of the excess over \$35,350
Over \$71,350 but not over \$108,725	\$13,867.50 plus 28% of the excess over \$71,350
Over \$108,725 but not over \$194,175	\$24,332.50 plus 33% of the excess over \$108,725
Over \$194,175	\$52,531 plus 35% of the excess over \$194,175

TABLE 5 — Section 1(e) — Estates and Trusts

<u>If Taxable Income Is:</u>	<u>The Tax Is:</u>
Not over \$2,400	15% of the taxable income
Over \$2,400 but not over \$5,600	\$360 plus 25% of the excess over \$2,400
Over \$5,600 but not over \$8,500	\$1,160 plus 28% of the excess over \$5,600
Over \$8,500 but not over \$11,650	\$1,972 plus 33% of the excess over \$8,500
Over \$11,650	\$3,011.50 plus 35% of the excess over \$11,650



.02 *Unearned Income of Minor Children Taxed as if Parent's Income (the "Kiddie Tax").* For taxable years beginning in 2012, the amount in § 1(g)(4)(A)(ii)(I), which is used to reduce the net unearned income reported on the child's return that is subject to the "kiddie tax," is \$950. This amount is the same as the \$950 standard deduction amount provided in section 3.11(2) of this revenue procedure. The same \$950 amount is used for purposes of § 1(g)(7) (that is, to determine whether a parent may elect to include a child's gross income in the parent's gross income and to calculate the "kiddie tax"). For example, one of the requirements for the parental election is that a child's gross income is more than the amount referenced in § 1(g)(4)(A)(ii)(I) but less than 10 times that amount; thus, a child's gross income for 2012 must be more than \$950 but less than \$9,500.

.03 *Adoption Credit.* For taxable years beginning in 2012, under § 23(a)(3) the credit allowed for an adoption of a child with special needs is \$12,650. For taxable years beginning in 2012, under § 23(b)(1) the maximum credit allowed for other adoptions is the amount of qualified adoption expenses up to \$12,650. The available adoption credit begins to phase out under

§ 23(b)(2)(A) for taxpayers with modified adjusted gross income in excess of \$189,710 and is completely phased out for taxpayers with modified adjusted gross income of \$229,710 or more. (See section 3.14 of this revenue procedure for the adjusted items relating to adoption assistance programs.)

.04 *Child Tax Credit.* For taxable years beginning in 2012, the value used in § 24(d)(1)(B)(i) to determine the amount of credit under § 24 that may be refundable is \$3,000.

.05 *Hope Scholarship, American Opportunity, and Lifetime Learning Credits.*

(1) For taxable years beginning in 2012, the Hope Scholarship Credit under § 25A(b)(1), as increased under § 25A(i) (the American Opportunity Tax Credit), is an amount equal to 100 percent of qualified tuition and related expenses not in excess of \$2,000, plus 25 percent of those expenses in excess of \$2,000, but not in excess of \$4,000. Accordingly, the maximum Hope Scholarship Credit allowable under § 25A(b)(1) for taxable years beginning in 2012 is \$2,500.

(2) For taxable years beginning in 2012, a taxpayer's modified adjusted gross income in excess of \$80,000 (\$160,000 for a joint return) is used to determine the reduc-

tion under § 25A(d)(2) in the amount of the Hope Scholarship Credit otherwise allowable under § 25A(a)(1). For taxable years beginning in 2012, a taxpayer's modified adjusted gross income in excess of \$52,000 (\$104,000 for a joint return) is used to determine the reduction under § 25A(d)(2) in the amount of the Lifetime Learning Credit otherwise allowable under § 25A(a)(2).

.06 *Earned Income Credit.*

(1) *In general.* For taxable years beginning in 2012, the following amounts are used to determine the earned income credit under § 32(b). The "earned income amount" is the amount of earned income at or above which the maximum amount of the earned income credit is allowed. The "threshold phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) above which the maximum amount of the credit begins to phase out. The "completed phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) at or above which no credit is allowed. The threshold phaseout amounts and the completed phaseout amounts shown in the table below for married taxpayers filing a joint return include the increase provided in § 32(b)(3)(B)(i), as adjusted for inflation for taxable years beginning in 2012.

<u>Item</u>	<u>Number of Qualifying Children</u>			
	<u>One</u>	<u>Two</u>	<u>Three or More</u>	<u>None</u>
Earned Income Amount	\$ 9,320	\$13,090	\$13,090	\$ 6,210
Maximum Amount of Credit	\$ 3,169	\$ 5,236	\$ 5,891	\$ 475
Threshold Phaseout Amount (Single, Surviving Spouse, or Head of Household)	\$17,090	\$17,090	\$17,090	\$ 7,770
Completed Phaseout Amount (Single, Surviving Spouse, or Head of Household)	\$36,920	\$41,952	\$45,060	\$13,980
Threshold Phaseout Amount (Married Filing Jointly)	\$22,300	\$22,300	\$22,300	\$12,980
Completed Phaseout Amount (Married Filing Jointly)	\$42,130	\$47,162	\$50,270	\$19,190

The instructions for the Form 1040 series provide tables showing the amount of

the earned income credit for each type of taxpayer.

(2) *Excessive investment income.* For taxable years beginning in 2012, the

earned income tax credit is not allowed under § 32(i) if the aggregate amount of certain investment income exceeds \$3,200.

.07 *Rehabilitation Expenditures Treated as Separate New Building.* For calendar year 2012, the per low-income unit qualified basis amount under § 42(e)(3)(A)(ii)(II) is \$6,200.

.08 *Low-Income Housing Credit.* For calendar year 2012, the amount used under § 42(h)(3)(C)(ii) to calculate the State housing credit ceiling for the low-income housing credit is the greater of (1) \$2.20

multiplied by the State population, or (2) \$2,525,000.

.09 *Alternative Minimum Tax Exemption for a Child Subject to the "Kiddie Tax."* For taxable years beginning in 2012, for a child to whom the § 1(g) "kiddie tax" applies, the exemption amount under §§ 55 and 59(j) for purposes of the alternative minimum tax under § 55 may not exceed the sum of (1) the child's earned income for the taxable year, plus (2) \$6,950.

.10 *Transportation Mainline Pipeline Construction Industry Optional Expense Substantiation Rules for Payments to Employees under Accountable Plans.* For

calendar year 2012, an eligible employer may pay certain welders and heavy equipment mechanics an amount of up to \$16 per hour for rig-related expenses that is deemed substantiated under an accountable plan if paid in accordance with Rev. Proc. 2002-41, 2002-1 C.B. 1098. If the employer provides fuel or otherwise reimburses fuel expenses, up to \$10 per hour is deemed substantiated if paid under Rev. Proc. 2002-41.

.11 *Standard Deduction.*

(1) *In general.* For taxable years beginning in 2012, the standard deduction amounts under § 63(c)(2) are as follows:

<u>Filing Status</u>	<u>Standard Deduction</u>
Married Individuals Filing Joint Returns and Surviving Spouses (§ 1(a))	\$11,900
Heads of Households (§ 1(b))	\$ 8,700
Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1(c))	\$ 5,950
Married Individuals Filing Separate Returns (§ 1(d))	\$ 5,950

(2) *Dependent.* For taxable years beginning in 2012, the standard deduction amount under § 63(c)(5) for an individual who may be claimed as a dependent by another taxpayer cannot exceed the greater of (1) \$950, or (2) the sum of \$300 and the individual's earned income.

(3) *Aged or blind.* For taxable years beginning in 2012, the additional standard deduction amount under § 63(f) for the aged or the blind is \$1,150. These amounts are increased to \$1,450 if the individual is also unmarried and not a surviving spouse.

.12 *Qualified Transportation Fringe Benefit.* For taxable years beginning in 2012, the monthly limitation under § 132(f)(2)(A), regarding the aggregate fringe benefit exclusion amount for transportation in a commuter highway vehicle and any transit pass, is \$125. The monthly limitation under § 132(f)(2)(B), regarding the fringe benefit exclusion amount for qualified parking, is \$240.

.13 *Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses.* For taxable years beginning in 2012, the exclusion under § 135, regarding income from United States savings bonds for taxpayers who pay qualified higher education expenses, begins to phase out for modified adjusted gross income above \$109,250 for joint returns and \$72,850 for other returns.

The exclusion is completely phased out for modified adjusted gross income of \$139,250 or more for joint returns and \$87,850 or more for other returns.

.14 *Adoption Assistance Programs.* For taxable years beginning in 2012, under § 137(a)(2) the amount that can be excluded from an employee's gross income for the adoption of a child with special needs is \$12,650. For taxable years beginning in 2012, under § 137(b)(1) the maximum amount that can be excluded from an employee's gross income for the amounts paid or expenses incurred by an employer for qualified adoption expenses furnished pursuant to an adoption assistance program for other adoptions by the employee is \$12,650. The amount excludable from an employee's gross income begins to phase out under § 137(b)(2)(A) for taxpayers with modified adjusted gross income in excess of \$189,710 and is completely phased out for taxpayers with modified adjusted gross income of \$229,710 or more. (See section 3.03 of this revenue procedure for the adjusted items relating to the adoption credit.)

.15 *Private Activity Bonds Volume Cap.* For calendar year 2012, the amounts used under § 146(d)(1) to calculate the State ceiling for the volume cap for private activity bonds is the greater of (1) \$95

multiplied by the State population, or (2) \$284,560,000.

.16 *Loan Limits on Agricultural Bonds.* For calendar year 2012, the loan limit amount on agricultural bonds under § 147(c)(2)(A) for first-time farmers is \$488,600.

.17 *General Arbitrage Rebate Rules.* For bond years ending in 2012, the amount of the computation credit determined under permission to rely on § 1.148-3(d)(4) of the proposed Income Tax Regulations is \$1,550.

.18 *Safe Harbor Rules for Broker Commissions on Guaranteed Investment Contracts or Investments Purchased for a Yield Restricted Defeasance Escrow.* For calendar year 2012, under § 1.148-5(e)(2)(iii)(B)(I), a broker's commission or similar fee for the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable if (1) the amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of (A) \$37,000, and (B) 0.2 percent of the computational base (as defined in § 1.148-5(e)(2)(iii)(B)(2)) or, if more, \$4,000; and (2) the issuer does not treat more than \$103,000 in brokers' commissions or similar fees as qualified administrative costs for all guaranteed investment contracts and investments for

yield restricted defeasance escrows purchased with gross proceeds of the issue.

.19 *Personal Exemption.* For taxable years beginning in 2012, the personal exemption amount under § 151(d) is \$3,800.

.20 *Election to Expense Certain Depreciable Assets.* For taxable years beginning in 2012, under § 179(b)(1)(C) the aggregate

cost of any § 179 property a taxpayer may elect to treat as an expense cannot exceed \$139,000. Under § 179(b)(2)(C), the \$139,000 limitation is reduced (but not below zero) by the amount the cost of § 179 property placed in service during the 2012 taxable year exceeds \$560,000.

.21 *Eligible Long-Term Care Premiums.* For taxable years beginning in 2012, the limitations under § 213(d)(10), regarding eligible long-term care premiums includible in the term “medical care,” are as follows:

<u>Attained Age Before the Close of the Taxable Year</u>	<u>Limitation on Premiums</u>
40 or less	\$ 350
More than 40 but not more than 50	\$ 660
More than 50 but not more than 60	\$1,310
More than 60 but not more than 70	\$3,500
More than 70	\$4,370

.22 *Medical Savings Accounts.*

(1) *Self-only coverage.* For taxable years beginning in 2012, the term “high deductible health plan” as defined in § 220(c)(2)(A) means, for self-only coverage, a health plan that has an annual deductible that is not less than \$2,100 and not more than \$3,150, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed \$4,200.

(2) *Family coverage.* For taxable years beginning in 2012, the term “high deductible health plan” means, for family coverage, a health plan that has an annual deductible that is not less than \$4,200 and not more than \$6,300, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed \$7,650.

.23 *Interest on Education Loans.* For taxable years beginning in 2012, the \$2,500 maximum deduction for interest paid on qualified education loans under § 221 begins to phase out under § 221(b)(2)(B) for taxpayers with modified adjusted gross income in excess of \$60,000 (\$125,000 for joint returns), and is completely phased out for taxpayers with modified adjusted gross income of \$75,000 or more (\$155,000 or more for joint returns).

.24 *Treatment of Dues Paid to Agricultural or Horticultural Organizations.* For taxable years beginning in 2012, the limitation under § 512(d)(1), regarding the exemption of annual dues required to be paid

by a member to an agricultural or horticultural organization, is \$151.

.25 *Insubstantial Benefit Limitations for Contributions Associated with Charitable Fund-Raising Campaigns.*

(1) *Low cost article.* For taxable years beginning in 2012, the unrelated business income of certain exempt organizations under § 513(h)(2) does not include a “low cost article” of \$9.90 or less.

(2) *Other insubstantial benefits.* For taxable years beginning in 2012, the \$5, \$25, and \$50 guidelines in section 3 of Rev. Proc. 90–12, 1990–1 C.B. 471 (as amplified by Rev. Proc. 92–49, 1992–1 C.B. 987, and modified by Rev. Proc. 92–102, 1992–2 C.B. 579), for disregarding the value of insubstantial benefits received by a donor in return for a fully deductible charitable contribution under § 170, are \$9.90, \$49.50, and \$99, respectively.

.26 *Expatriation to Avoid Tax.* For calendar year 2012, an individual with “average annual net income tax” of more than \$151,000 for the five taxable years ending before the date of the loss of United States citizenship under § 877(a)(2)(A) is a covered expatriate for purposes of § 877A(g)(1).

.27 *Tax Responsibilities of Expatriation.* For taxable years beginning in 2012, the amount that would be includible in the gross income of a covered expatriate by reason of § 877A(a)(1) is reduced (but not below zero) by \$651,000.

.28 *Foreign Earned Income Exclusion.* For taxable years beginning in 2012, the

foreign earned income exclusion amount under § 911(b)(2)(D)(i) is \$95,100.

.29 *Unified Credit Against Estate Tax.* For an estate of any decedent dying during calendar year 2012, the basic exclusion amount is \$5,120,000 for determining the amount of the unified credit against estate tax under § 2010.

.30 *Valuation of Qualified Real Property in Decedent's Gross Estate.* For an estate of a decedent dying in calendar year 2012, if the executor elects to use the special use valuation method under § 2032A for qualified real property, the aggregate decrease in the value of qualified real property resulting from electing to use § 2032A for purposes of the estate tax cannot exceed \$1,040,000.

.31 *Annual Exclusion for Gifts.*

(1) For calendar year 2012, the first \$13,000 of gifts to any person (other than gifts of future interests in property) are not included in the total amount of taxable gifts under § 2503 made during that year.

(2) For calendar year 2012, the first \$139,000 of gifts to a spouse who is not a citizen of the United States (other than gifts of future interests in property) are not included in the total amount of taxable gifts under §§ 2503 and 2523(i)(2) made during that year.

.32 *Tax on Arrow Shafts.* For calendar year 2012, the tax imposed under § 4161(b)(2)(A) on the first sale by the manufacturer, producer, or importer of any shaft of a type used in the manufacture of certain arrows is \$0.46 per shaft.

.33 *Passenger Air Transportation Excise Tax*. For calendar year 2012, the tax under § 4261(b)(1) on the amount paid for each domestic segment of taxable air transportation is \$3.80. For calendar year 2012, the tax under § 4261(c)(1) on any amount paid (whether within or without the United States) for any air transportation, if the transportation begins or ends in the United States, generally is \$16.70. However, for a domestic segment beginning or ending in Alaska or Hawaii as described in § 4261(c)(3), the tax applies only to departures and the rate is \$8.40.

.34 *Reporting Exception for Certain Exempt Organizations with Nondeductible Lobbying Expenditures*. For taxable years beginning in 2012, the annual per person, family, or entity dues limitation to qualify for the reporting exception under § 6033(e)(3) (and section 5.05 of Rev. Proc. 98-19, 1998-1 C.B. 547), regarding certain exempt organizations with nondeductible lobbying expenditures, is \$105 or less.

.35 *Notice of Large Gifts Received from Foreign Persons*. For taxable years beginning in 2012, recipients of gifts from certain foreign persons may be required to report these gifts under § 6039F if the aggregate value of gifts received in a taxable year exceeds \$14,723.

.36 *Persons Against Whom a Federal Tax Lien Is Not Valid*. For calendar year 2012, a federal tax lien is not valid against (1) certain purchasers under § 6323(b)(4) who purchased personal property in a casual sale for less than \$1,430, or (2) a mechanic's lienor under § 6323(b)(7) who repaired or improved certain residential property if the contract price with the owner is not more than \$7,160.

.37 *Property Exempt from Levy*. For calendar year 2012, the value of property

exempt from levy under § 6334(a)(2) (fuel, provisions, furniture, and other household personal effects, as well as arms for personal use, livestock, and poultry) cannot exceed \$8,570. The value of property exempt from levy under § 6334(a)(3) (books and tools necessary for the trade, business, or profession of the taxpayer) cannot exceed \$4,290.

.38 *Interest on a Certain Portion of the Estate Tax Payable in Installments*. For an estate of a decedent dying in calendar year 2012, the dollar amount used to determine the "2-percent portion" (for purposes of calculating interest under § 6601(j)) of the estate tax extended as provided in § 6166 is \$1,390,000.

.39 *Attorney Fee Awards*. For fees incurred in calendar year 2012, the attorney fee award limitation under § 7430(c)(1)(B)(iii) is \$180 per hour.

.40 *Periodic Payments Received under Qualified Long-Term Care Insurance Contracts or under Certain Life Insurance Contracts*. For calendar year 2012, the stated dollar amount of the *per diem* limitation under § 7702B(d)(4), regarding periodic payments received under a qualified long-term care insurance contract or periodic payments received under a life insurance contract that are treated as paid by reason of the death of a chronically ill individual, is \$310.

#### SECTION 4. EFFECTIVE DATE

.01 *General Rule*. Except as provided in section 4.02, this revenue procedure applies to taxable years beginning in 2012.

.02 *Calendar Year Rule*. This revenue procedure applies to transactions or events occurring in calendar year 2012 for purposes of sections 3.07 (rehabilitation expenditures treated as separate

new building), 3.08 (low-income housing credit), 3.10 (transportation mainline pipeline construction industry optional expense substantiation rules for payments to employees under accountable plans), 3.15 (private activity bonds volume cap), 3.16 (loan limits on agricultural bonds), 3.17 (general arbitrage rebate rules), 3.18 (safe harbor rules for broker commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow), 3.26 (expatriation to avoid tax), 3.29 (unified credit against estate tax), 3.30 (valuation of qualified real property in decedent's gross estate), 3.31 (annual exclusion for gifts), 3.32 (tax on arrow shafts), 3.33 (passenger air transportation excise tax), 3.36 (persons against whom a federal tax lien is not valid), 3.37 (property exempt from levy), 3.38 (interest on a certain portion of the estate tax payable in installments), 3.39 (attorney fee awards), and 3.40 (periodic payments received under qualified long-term care insurance contracts or under certain life insurance contracts).

#### SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is William Ruane of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Ruane at (202) 622-4920 (not a toll-free call).

## Part IV. Items of General Interest

### Notice of Proposed Rulemaking and Notice of Public Hearing

#### Tax Return Preparer Penalties Under Section 6695

##### REG-140280-09

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that would modify existing regulations related to the tax return preparer penalties under section 6695 of the Internal Revenue Code (Code). These proposed regulations are necessary to monitor and to improve compliance with the tax return preparer due diligence requirements of section 6695(g). The proposed regulations affect tax return preparers. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by November 10, 2011. Outlines of topics to be discussed at the public hearing scheduled for November 7, 2011, must be received by November 1, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-140280-09), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-140280-09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-140280-09). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Spence Hanemann, (202)

622-4940; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Richard Hurst, (202) 622-7180 (not toll-free numbers) or [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov).

##### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in these proposed regulations was previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1570. Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, D.C. 20224. Comments on the collection of information should be received by November 10, 2011. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the IRS, including whether the information will have practical utility;

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

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

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

The collection of information is in §1.6695-2(b)(1) and (b)(4) of these proposed regulations, and is an increase in the total annual burden from the burden in the current regulations. The collection of this information will improve the IRS' ability to enforce compliance with the due diligence requirements under section 6695(g) with respect to determining eligibility for, or the amount of, the earned income credit (EIC) under section 32.

Currently, the IRS estimates that there are 550,000 persons who are tax return preparers with respect to determining the eligibility for, or the amount of, EIC.

This collection of information is mandatory. The likely respondents are individuals and businesses.

Estimated total annual recordkeeping and reporting burden is 3,025,000 hours.

Estimated annual burden per tax return preparer varies from 30 minutes to 10 hours, depending on individual circumstances, with an estimated average of 5 hours and 30 minutes.

Estimated number of affected practitioners is 550,000.

Estimated annual frequency of responses is one time per tax return or claim for refund on which EIC is reported.

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.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

##### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 6695 of the Code.

The Treasury Department and the IRS published final regulations in the **Federal Register** on December 22, 2008, as T.D. 9436, 2009-3 I.R.B. 268, 73 FR 78430 (the December 2008 final regulations). The December 2008 final regulations were a product of a comprehensive review and overhaul of the regulations related to tax return preparer penalties, including those under section 6695. These proposed regulations introduce additional measures intended to improve compliance with the tax return preparer EIC due diligence requirements of section 6695(g).

##### Explanation of Provisions

The following is a summary of the proposed changes to the existing regulations affecting tax return preparers.

## *Tax Return Preparers Subject to Due Diligence Requirements*

Section 301.7701-15(a) of the Procedure and Administration regulations defines a “tax return preparer” as “any person who prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of any return of tax or any claim for refund of tax . . . .” Proposed §1.6695-2(a) changes “signing tax return preparer” to “tax return preparer.” Consequently, under the proposed regulations, all tax return preparers (whether an individual or firm) who determine eligibility for, or amount of, EIC under section 32 of the Code and who fail to satisfy the due diligence requirements of paragraph (b) of these proposed regulations are subject to the penalty under section 6695(g). Under the proposed regulations, a firm that employs a person to prepare for compensation a tax return or claim for refund may be subject to the penalty for its employee’s failure to comply with the due diligence requirements.

Because a firm might not have direct knowledge of an employee’s failure to comply with the due diligence requirements, however, proposed §1.6695-2(c) provides additional requirements that must be met before the penalty will be imposed on a firm. Proposed §1.6695-2(c)(1) provides that a firm will be subject to the penalty if a member of its principal management or the principal management of a branch office participated in or knew of the failure to comply with the due diligence requirements. Proposed §1.6695-2(c)(2) also provides that a firm will be subject to the penalty if it failed to establish reasonable and appropriate procedures to ensure compliance with the due diligence requirements. Finally, proposed §1.6695-2(c)(3) provides that, even if a firm has established reasonable and appropriate compliance procedures, it will be subject to the penalty if it disregarded its compliance procedures through willfulness, recklessness, or gross indifference in the preparation of the tax return or claim for refund for which the penalty is imposed. A firm has demonstrated gross indifference if it ignores facts that would lead a person of reasonable prudence and competence to investigate or ascertain whether an employee is complying with the due diligence requirements.

## *Submission of Form 8867*

Current §1.6695-2(b)(1) requires a tax return preparer to complete Form 8867, “Paid Preparer’s Earned Income Credit Checklist,” or otherwise record the information required by Form 8867 in the tax return preparer’s files. In response to concerns over improper payments of EIC determined by tax return preparers, the Department of the Treasury and the IRS are proposing to require tax return preparers to submit the Form 8867 with the tax return or claim for refund claiming the EIC.

Proposed §1.6695-2(b)(1)(i), therefore, requires that the Form 8867 be submitted to the IRS in the manner required by forms, instructions, or other appropriate guidance. Comments are specifically requested regarding the best way for the Department of Treasury and the IRS to implement this submission requirement. Comments are also requested regarding how Form 8867 and Schedule EIC might be revised to reduce payments of improper EIC claims and to improve the IRS’ ability to detect these claims.

A tax return preparer has satisfied the due diligence requirements of current §1.6695-2(b)(1) if the tax return preparer records, in paper or electronic files, the information necessary to complete Form 8867. Under proposed §1.6695-2(b)(1), the due diligence requirements of paragraph (b)(1) can only be satisfied by completion and submission of the Form 8867 (or its successor form) and, therefore, cannot be satisfied by submission of any other form or document.

## *Computation of Credit*

The amendments in proposed §1.6695-2(b)(2) are not substantive. The term “tax return preparer” has been substituted for the term “preparer.” Under the proposed regulations, tax return preparers would continue to complete the EIC Worksheet in the Form 1040 Instructions or any other form prescribed by the IRS, or otherwise record in paper or electronic files their EIC computation, including the method and information used to make the computation. To improve clarity, however, the defined terms “Computation Worksheet” and “Alternative Computation Record” have been replaced throughout

the proposed regulation with descriptive language.

## *Retention of Records*

Under proposed §1.6695-2(b)(4)(i)(C), tax return preparers must still retain a record of how and when the information used to complete Form 8867 and the EIC Worksheet (or other record of the tax return preparer’s EIC computation permitted under §1.6695-2(b)(2)(i)(B)) was obtained. Additionally, a tax return preparer must also retain a copy of any document that was provided by the taxpayer and on which the tax return preparer relied to complete Form 8867 or the EIC Worksheet (or other record of the tax return preparer’s EIC computation permitted under §1.6695-2(b)(2)(i)(B)).

Proposed §1.6695-2(b)(4)(ii) makes two changes. It substitutes “paragraph (b)(4)(i)” for “paragraph (b)(4)” in order to account for prior restructuring of paragraph (b)(4). It also changes the date through which tax return preparers must retain the records required by this section. The current retention date is three years after the June 30th following the date the return or claim for refund was presented to the taxpayer for signature. The proposed retention date is three years from the later of the due date of the return (determined without regard to any extension of time for filing) or the date the return or claim for refund was filed. This revision to the retention date will simplify the determination of the retention date for both the IRS and tax return preparers.

## *Exception to the Penalty Under Section 6695(g)*

Proposed §1.6695-2(d) retains the existing exception to the penalty, but excludes from the exception a firm that is subject to the penalty under the special rules for firms in proposed §1.6695-2(c). Thus, in no case could a firm that is subject to the penalty under proposed §1.6695-2(c) satisfy the facts and circumstances test provided in proposed §1.6695-2(d).

## *Proposed Effective and Applicability Dates*

Proposed §1.6695-2(e) provides that the rules in this notice of proposed rule-

making will apply to tax returns and claims for refund for tax years ending on or after December 31, 2011 that are filed after the date the final regulations are published in the **Federal Register**.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

The proposed rules affect tax return preparers who determine the eligibility for, or the amount of, EIC. The NAICS code that relates to tax preparation services (NAICS code 541213) is the appropriate code for tax return preparers subject to this notice of proposed rulemaking. Entities identified as tax preparation services are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than \$7 million. The IRS estimates that approximately 75 to 85 percent of the 550,000 persons who work at firms or are self-employed tax return preparers are operating as or employed by small entities. The IRS has determined that these proposed rules will have an impact on a substantial number of small entities.

The IRS has determined, however, that the impact on entities affected by the proposed rule will not be significant. The current regulations under section 6695(g) already require tax return preparers to complete the Form 8867 or otherwise record in their files the information necessary to complete the form. Tax return preparers also must currently maintain records of the

checklists and EIC computations, as well as a record of how and when the information used to compute the EIC was obtained by the tax return preparer. The amount of time necessary to submit, record, and retain the additional information required in these proposed regulations, therefore, should be minimal for these tax return preparers.

Based on these facts, the IRS hereby certifies that the collection of information contained in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

### Comments and Public Hearing

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

A public hearing has been scheduled for November 7, 2011, at 10:00 A.M. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and

an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by November 1, 2011. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal author of these proposed regulations is Spence Hanemann, Office of the Associate Chief Counsel (Procedure and Administration).

\* \* \* \* \*

### Proposed Amendments to the Regulations

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

#### PART 1—INCOME TAXES

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

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

Section 1.6695–2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 2. In §1.6695–2, paragraphs (a), (b)(1), (b)(2), (b)(4), (c), and (d) are revised and new paragraph (e) is added to read as follows:

*§1.6695–2 Tax return preparer due diligence requirements for determining earned income credit eligibility.*

(a) *Penalty for failure to meet due diligence requirements.* A person who is a tax return preparer of a tax return or claim for refund under the Internal Revenue Code with respect to determining the eligibility for, or the amount of, the earned income credit (EIC) under section 32 and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty of \$100 for each such failure.

(b) \* \* \*

(1) *Completion and submission of Form 8867—(i)* The tax return preparer must complete Form 8867, “Paid Preparer’s Earned Income Credit Checklist,” or such other form and such other information as may be prescribed by the Internal Revenue Service (IRS), and submit it in the manner

required by forms, instructions, or other appropriate guidance.

(ii) The tax return preparer's completion of Form 8867 (or successor form) must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained by the tax return preparer.

(2) *Computation of credit*—(i) The tax return preparer must either—

(A) Complete the Earned Income Credit Worksheet in the Form 1040 instructions or such other form and such other information as may be prescribed by the IRS; or

(B) Otherwise record in one or more documents in the tax return preparer's paper or electronic files the tax return preparer's EIC computation, including the method and information used to make the computation.

(ii) The tax return preparer's completion of the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section) must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained by the tax return preparer.

\* \* \* \* \*

(4) *Retention of records*—(i) The tax return preparer must retain—

(A) A copy of the completed Form 8867 (or successor form);

(B) A copy of the completed Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section); and

(C) A record of how and when the information used to complete Form 8867 (or successor form) and the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section) was obtained by the tax return preparer, including the identity of any person furnishing the information, as well as a copy of any document that was provided by the taxpayer and on which the tax return preparer relied to complete Form 8867 (or successor form) or the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section).

(ii) The items in paragraph (b)(4)(i) of this section must be retained for three years from the due date of the return (determined without regard to any extension of time for filing) or the date the return or claim for refund was filed, whichever date is later, and may be retained on paper or electronically in the manner prescribed in applicable regulations, revenue rulings, revenue procedures, or other appropriate guidance (see §601.601(d)(2) of this chapter).

(c) *Special rule for firms*. A firm that employs a tax return preparer subject to a penalty under section 6695(g) is also subject to penalty if, and only if—

(1) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or knew of the failure to comply with the due diligence requirements of this section;

(2) The firm failed to establish reasonable and appropriate procedures to ensure compliance with the due diligence requirements of this section; or

(3) The firm disregarded its reasonable and appropriate compliance procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the preparation of the tax return or claim for refund with respect to which the penalty is imposed.

(d) *Exception to penalty*. The section 6695(g) penalty will not be applied with respect to a particular tax return or claim for refund if the tax return preparer can demonstrate to the satisfaction of the Internal Revenue Service that, considering all the facts and circumstances, the tax return preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of this section with respect to the particular return or claim for refund was isolated and inadvertent. The preceding sentence does not apply to a firm that is subject to the penalty as a result of paragraph (c) of this section.

(e) *Effective/applicability date*. This section is effective for tax returns and claims for refund filed after the date that these regulations are published as final regulations in the **Federal Register**, and applies to tax returns and claims for re-

fund for tax years ending on or after December 31, 2011.

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

(Filed by the Office of the Federal Register on October 6, 2011, 11:15 a.m., and published in the issue of the Federal Register for October 11, 2011, 76 F.R. 62689)

## Notice of Proposed Rulemaking

### Retail Inventory Method

#### REG-125949-10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the retail inventory method of accounting. The regulations restate and clarify the computation of ending inventory values under the retail inventory method and provide a special rule for certain taxpayers that receive margin protection payments and similar vendor allowances. The regulations affect taxpayers that are retailers and elect to use a retail inventory method.

DATES: Written or electronically generated comments and requests for a public hearing must be received by January 5, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-125949-10), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 am and 4 pm to: CC:PA:LPD:PR (REG-125949-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-125949-10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Natasha M. Mulleneaux,



(202) 622-3967; concerning submission of comments and requests for a public hearing, Richard Hurst at [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov).

## SUPPLEMENTARY INFORMATION:

### Background

This document contains proposed amendments to 26 CFR part 1 relating to the retail inventory method under §1.471-8 of the Income Tax Regulations.

Section 471 provides that a taxpayer's method of accounting for inventories must clearly reflect income. Section 1.471-2(c) provides that the bases of inventory valuation most commonly used and meeting the requirements of section 471 are (1) cost and (2) cost or market, whichever is lower (LCM). Section 1.471-8 allows retailers to approximate cost or LCM by using the retail inventory method. A last-in, first out (LIFO) taxpayer that elects to use the retail inventory method must approximate cost.

Under the retail inventory method, the retail selling price of ending inventory is converted to approximate cost or approximate LCM using a cost-to-retail ratio, or cost complement. The numerator of the cost complement is the value of beginning inventory plus the cost of purchases during the taxable year, and the denominator is the retail selling prices of beginning inventories plus the initial retail selling prices of purchases. The cost complement is then multiplied by the retail selling price of ending inventory (multiplicand) to determine the ending inventory value.

Section 1.471-3 provides that, for inventory valuation purposes, the cost of purchases during the year generally includes invoice price less trade or other discounts. A discount may be based on a retailer's sales volume (sales-based allowance) or on the quantity of merchandise a retailer purchases (volume-based allowance), or may relate to a retailer's reduction in retail selling price (markdown allowance or margin protection payment). A vendor may provide a retailer with a markdown allowance or margin protection payment when the retailer temporarily or permanently reduces the retail selling price of its inventory to sell it. A markdown allowance or margin protection payment differs from other types of discounts because it is intended to maintain

the retailer's profit margin and therefore is directly related to the inventory selling price.

Under proposed §1.471-3(e) (75 FR 78944), the amount of an allowance, discount, or price rebate a taxpayer earns by selling specific merchandise (a sales-based vendor allowance) is a reduction in the cost of the merchandise sold and does not reduce the inventory cost or value of goods on hand at the end of the taxable year.

### Explanation of Provisions

#### 1. Overview

The proposed regulations restructure and restate the regulations under §1.471-8 in plain language. The proposed regulations also add rules addressing the treatment of sales-based vendor allowances and of vendor markdown allowances and margin protection payments in the retail inventory method computation.

#### 2. Sales-Based Vendor Allowances

The proposed regulations clarify the interaction of proposed §1.471-3(e) with the retail inventory method by excluding from the numerator of the cost complement formula the amount of a sales-based vendor allowance.

#### 3. Computation of Cost Complement under the Retail LCM Method

The retail inventory method determines an ending inventory value by maintaining proportionality between costs and selling prices. Under the retail LCM method, a reduction in retail selling price reduces the value of ending inventory in the same ratio as the cost complement.

If a taxpayer earns an allowance, discount, or price rebate, the inventory cost in the numerator of the cost complement declines, resulting in a reduction of ending inventory value computed under the retail inventory method. If the allowance, discount, or price rebate is related to a permanent markdown of the retail selling price (as in the case of a markdown allowance or margin protection payment), ending inventory value is further reduced as a result of the decrease in ending retail selling prices (the multiplicand in the formula). This additional reduction of ending inventory

value caused by reducing both the numerator of the cost complement and the multiplicand (1) generally results in a lower ending inventory value for a retail LCM method taxpayer than for a similarly situated first-in, first-out (FIFO) taxpayer that values inventory at LCM, and (2) does not clearly reflect income.

To address this distortion, the proposed regulations provide that a retail LCM method taxpayer may not reduce the numerator of the cost complement for an allowance, discount, or price rebate that is related to or intended to compensate for a permanent markdown of retail selling prices. Thus, in the case of markdown allowances and margin protection payments, the value of ending inventory as computed under the retail LCM method is reduced solely as a result of the reduction in retail selling price, avoiding an unwarranted additional reduction in inventory value for a single markdown allowance and more reasonably approximating LCM.

As an alternative to this proposed modification, the retail inventory method could achieve the same result by permitting taxpayers to reduce the numerator of the cost complement for all non-sales based allowances, discounts, or price rebates, including markdown allowances, but requiring a reduction of the denominator of the cost complement for all permanent markdowns related to markdown allowances. Comments are specifically requested on whether the final regulations should provide this or other alternative retail LCM methods.

#### 4. Temporary Price Adjustments

The proposed regulations clarify that under the retail inventory method taxpayers do not adjust the cost complement or ending retail selling prices for temporary markdowns and markups.

### Effective/Applicability Date

These regulations are proposed to apply for taxable years beginning after the date the regulations are published as final regulations in the **Federal Register**.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive

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

### Comments and Requests for a Public Hearing

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

A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these regulations is Natasha M. Mulleneaux of the Office of the Associate Chief Counsel (Income Tax & Accounting). Other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

### Proposed Amendments to the Regulations

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

#### PART 1—INCOME TAXES

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

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

Par. 2. Section 1.471-8 is revised to read as follows:

#### §1.471-8 Inventories of retail merchants.

(a) *In general.* A taxpayer that is a retail merchant may use the retail inventory method of accounting described in this section. The retail inventory method uses a formula to convert the retail selling price of ending inventory to an approximation of cost (retail cost method) or an approximation of lower of cost or market (retail LCM method). A taxpayer may use the retail inventory method instead of valuing inventory at cost under §1.471-3 or lower of cost or market under §1.471-4.

(b) *Computation*—(1) *In general.* A taxpayer computes the value of ending inventory under the retail inventory method by multiplying a cost complement by the retail selling prices of the goods on hand at the end of the taxable year.

(2) *Cost complement*—(i) *In general.* The cost complement is a ratio computed as follows—

(A) The numerator is the value of beginning inventory plus the cost of goods purchased during the taxable year; and

(B) The denominator is the retail selling prices of beginning inventory plus the retail selling prices of goods purchased during the year (that is, the *bona fide* retail selling prices of the items at the time acquired), adjusted for all permanent markups and markdowns, including markup and markdown cancellations and corrections. The denominator is not adjusted for temporary markups or markdowns.

(ii) *Sales-based vendor allowances.* A taxpayer may not reduce the numerator of the cost complement by the amount of an allowance, discount, or price rebate a taxpayer earns by selling specific merchandise.

(iii) *Special rules for cost complement for retail LCM method*—(A) *Margin protection payments and similar allowances.*

A taxpayer using the retail inventory method to approximate LCM may not reduce the numerator of the cost complement by the amount of an allowance, discount, or price rebate that is related to or intended to compensate for a permanent reduction in the taxpayer's retail

selling price of inventory (for example, a margin protection payment or markdown allowance).

(B) *Exclusion of markdowns in denominator.* A taxpayer using the retail inventory method to approximate LCM excludes markdowns (and markdown cancellations or corrections) from the denominator of the cost complement. Any markups must be reduced by the markdowns made to cancel or correct them.

(3) *Ending inventory retail selling prices.* A taxpayer must include all permanent markups and markdowns but may not include temporary markups or markdowns in determining the retail selling prices of goods on hand at the end of the taxable year. A taxpayer may not include a markdown that is not an actual reduction of retail selling price.

(c) *Special rules for LIFO taxpayers.* A taxpayer using the last-in, first-out (LIFO) inventory method with the retail inventory method uses the retail inventory method to approximate cost. See §1.472-1(k) for additional adjustments for a taxpayer using the LIFO inventory method with the retail cost method.

(d) *Scope of retail inventory method.* A taxpayer may use the retail inventory method to value ending inventory for a department, a class of goods, or a stock-keeping unit. A taxpayer maintaining more than one department or dealing in classes of goods with different percentages of gross profit must compute cost complements separately for each department or class of goods.

(e) *Examples.* The following examples illustrate the rules of this section:

*Example 1.* (i) R, a retail merchant who uses the retail method to approximate LCM, has no beginning inventory in 2010. R purchases 40 tables during 2010 for \$60 each for a total of \$2,400. R offers the tables for sale at \$100 each for an aggregate retail selling price of \$4,000. R does not sell any tables at a price of \$100, so R permanently marks down the retail selling price of its tables to \$90 each. As a result of the \$10 markdown, R's supplier provides R a \$6 per table margin protection payment. R sells 25 tables during 2010 and has 15 tables in ending inventory at the end of 2010.

(ii) Under paragraph (b)(2)(i)(A) of this section, the numerator of the cost complement is the aggregate cost of the tables. Under paragraph (b)(2)(iii)(A) of this section, R may not reduce the numerator of the cost complement by the amount of the margin protection payment. Under paragraph (b)(2)(i)(B) of this section, the denominator of the cost complement is the aggregate of the *bona fide* retail selling prices of

all the tables at the time acquired. Under paragraph (b)(2)(iii)(B) of this section, R excludes the markdown from the denominator of the cost complement. Therefore, R's cost complement is \$2,400/\$4,000, or 60 percent.

(iii) Under paragraph (b)(3) of this section, R includes the permanent markdown in determining year-end retail selling prices. Therefore, the aggregate retail selling price of R's ending table inventory is \$1,350 (15 \* \$90). Approximating LCM under the retail method, the value of R's ending table inventory is \$810 (60 percent \* \$1,350).

*Example 2.* (i) The facts are the same as in *Example 1*, except that R permanently reduces the retail selling price of all 40 tables to \$50 per unit and the 15 tables on hand at the end of the year are marked for sale at that price. In contrast to the \$10 markdown, the additional \$40 markdown is unrelated to a margin protection payment or other allowance.

(ii) Under paragraph (b)(2)(iii)(B) of this section, R excludes the markdowns from the denominator of the cost complement. Therefore, R's cost complement is \$2,400/\$4,000, or 60 percent.

(iii) Under paragraph (b)(3) of this section, R includes the markdowns in determining year-end retail selling prices. Therefore, the aggregate retail selling price of R's ending inventory is \$750 (15 \* \$50). Approximating LCM under the retail method, the value of R's ending inventory is \$450 (60 percent \* \$750).

*Example 3.* (i) The facts are the same as in *Example 1*, except that R uses the LIFO inventory method. R must value inventories at cost and, under paragraph (c) of this section, uses the retail method to approximate cost.

(ii) Under paragraph (b)(2)(i)(A) of this section, R reduces the numerator of the cost complement by the amount of the margin protection payment. Under paragraph (b)(2)(i)(B) of this section, R includes the markdown in the denominator of the cost complement. Therefore, R's cost complement is \$2,160/\$3,600, or 60 percent.

(iii) Under paragraph (b)(3) of this section, R includes the markdown in determining year-end retail selling prices. Therefore, the aggregate retail selling price of R's ending inventory is \$1,350 (15 \* \$90). Approximating cost under the retail method, the value of R's ending inventory is \$810 (60 percent \* \$1,350).

(f) *Effective/applicability date.* This section applies to taxable years beginning

after the date these regulations are published as final regulations in the **Federal Register**.

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

(Filed by the Office of the Federal Register on October 6, 2011, 8:45 a.m., and published in the issue of the Federal Register for October 7, 2011, 76 F.R. 62327)

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

### **Announcement 2011-70**

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

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

activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin November 7, 2011, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Carib News Foundation  
New York, NY  
Caring and Sharing, Inc.  
Kansas City, MO  
Center for AIDS Prevention  
Beverly Hills, CA  
Ezer Akeres Habais, Inc.  
Brooklyn, NY  
National Carbon Offset Coalition  
Butte, MT  
Nazarene Ministry of Help  
Portland, OR  
Texas Team Sports  
San Antonio, TX  
Thumpers Therapeutic Center  
Milwaukee, OR  
Tradewinds Foundation, Inc.  
New Hartford, NY  
United Homeless Organization, Inc.  
Bronx, PA

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

# Abbreviations

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

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

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

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

## Numerical Finding List<sup>1</sup>

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