

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. 2011-29, page 824.

Accrual of liability to unknown payees. This ruling holds that an employer can establish the “fact of the liability” under section 461 of the Code for bonuses payable to a group of employees even though the employer does not know the identity of any particular bonus recipient and the amount payable to that recipient until after the end of the taxable year. Rev. Rul. 76-345 revoked.

Rev. Rul. 2011-30, page 826.

2011 base period T-bill rate. The “base period T-bill rate” for the period ending September 30, 2011, is published as required by section 995(f) of the Code.

Rev. Rul. 2011-31, page 829.

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 December 2011.

ESTATE TAX

Rev. Rul. 2011-28, page 830.

Substitution of insurance policy. This ruling provides guidance regarding whether a grantor’s retention of a power, exercisable in a nonfiduciary capacity, to acquire an insurance policy held by a trust by substituting other assets of equivalent value will cause the value of the insurance policy to be includible in the grantor’s gross estate under section 2042 of the Code. The ruling provides that a grantor’s retention of the power, exercisable in a nonfiduciary capacity, to acquire an insurance policy held in trust by substituting other assets of equivalent value will not, by itself, cause the value of the insurance pol-

icy to be includible in the grantor’s gross estate under section 2042, provided the trustee has a fiduciary obligation (under local law or the trust instrument) to ensure the grantor’s compliance with the terms of this power by satisfying itself that the properties acquired and substituted by the grantor are in fact of equivalent value, and further provided that the substitution power cannot be exercised in a manner that can shift benefits among the trust beneficiaries.

ADMINISTRATIVE

Notice 2011-94, page 834.

Application of general welfare exclusion to Indian tribal government programs. This notice requests comments describing actual or proposed Indian tribal government programs that provide benefits to members and the application of the general welfare exclusion to the programs and benefits.

Rev. Proc. 2011-56, page 834.

Trusts for Indian minors. This procedure provides a revised safe harbor for Indian tribes to establish trusts for tribal members who are minors or legally incompetent for the distribution of gaming revenues under the Indian Gaming Regulatory Act. Rev. Proc. 2003-14 clarified, modified, and superseded.

Rev. Proc. 2011-57, page 836.

This procedure publishes the amounts of unused housing credit carryovers allocated to qualified states under section 42(h)(3)(D) of the Code for calendar year 2011.

Finding Lists begin on page ii.



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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 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2011. See Rev. Rul. 2011-31, page 829.

26 CFR 1.42-14: Allocation rules for post-1989 State housing credit ceiling amounts.

Guidance is provided to state housing credit agencies of qualified states that request an allocation of unused housing credit carryover under section 42(h)(3)(D) of the Internal Revenue Code. See Rev. Proc. 2011-57, page 836.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2011. See Rev. Rul. 2011-31, page 829.

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 December 2011. See Rev. Rul. 2011-31, page 829.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2011. See Rev. Rul. 2011-31, page 829.

Section 451.—General Rules for Taxable Year of Inclusion

26 CFR 1.451-1: General rule for taxable year of inclusion.

Rules are provided under which trusts for Indian tribal members who are minors or legally incompetent for the distribution of gaming revenues under the Indian Gaming Regulatory Act are treated as grantor trusts and the trust beneficiary is not taxed on distributions to the trust or income earned by the trust until actually or constructively received. See Rev. Proc. 2011-56, page 834.

Section 461.—General Rule for Taxable Year of Deduction

26 CFR 1.461-1: General rule for taxable year of deduction.

Accrual of liability to unknown payees. This ruling holds that an employer can establish the “fact of the liability” under section 461 of the Code for bonuses payable to a group of employees even though the employer does not know the identity of any particular bonus recipient and the amount payable to that recipient until after the end of the taxable year. Rev. Rul. 76-345 revoked.

Rev. Rul. 2011-29

ISSUE

Can an employer establish the “fact of the liability” under § 461 of the Internal Revenue Code for bonuses payable to a group of employees if the employer does not know the identity of any particular bonus recipient and the amount payable to that recipient until after the end of the taxable year?

FACTS

X uses an accrual method of accounting for federal income tax purposes. X pays bonuses to a group of employees pursuant to a program that defines the terms and conditions under which the bonuses are paid for a taxable year. X communicates the general terms of the bonus program to employees when they become eligible and whenever the program is changed.

Under the program, bonuses are paid to X’s employees for services performed during the taxable year. The minimum total amount of bonuses payable under the program to X’s employees as a group is determinable either (a) through a formula that is fixed prior to the end of the taxable year, taking into account financial data reflecting results as of the end of that taxable year, or (b) through other corporate action, such as a resolution of X’s board of directors or compensation committee, made before the end of the taxable year,

that fixes the bonuses payable to the employees as a group. To be eligible for a bonus, an employee must perform services during the taxable year and be employed on the date that X pays bonuses. Under the program, bonuses are paid after the end of the taxable year in which the employee performed the related services but before the 15th day of the 3rd calendar month after the close of that taxable year.

Under the program, any bonus amount allocable to an employee who is not employed on the date on which X pays bonuses is reallocated among other eligible employees. Thus, the aggregate minimum amount of bonuses X pays to its group of eligible employees is not reduced by the departure of an employee after the end of the taxable year but before bonuses are paid for that year.

LAW

Section 461(a) provides that the amount of any deduction or credit must be taken for the taxable year that is the proper taxable year under the method of accounting the taxpayer uses to compute taxable income.

Section 1.461-1(a)(2)(i) of the Income Tax Regulations provides that, under an accrual method of accounting, a liability is incurred, and is generally taken into account for federal income tax purposes, in the taxable year in which (1) all the events have occurred that establish the fact of the liability, (2) the amount of the liability can be determined with reasonable accuracy, and (3) economic performance has occurred for the liability (collectively, the “all events test”). See also § 1.446-1(c)(1)(ii)(A). This revenue ruling addresses only whether the first prong of the all events test is met.

The first prong of the all events test requires that all the events have occurred that establish the fact of the liability. Generally, all events occur to establish the fact of a liability when (1) the event fixing the liability, whether that be the required performance or other event, occurs, or (2) payment is unconditionally due. Rev. Rul. 2007-3, 2007-1 C.B. 350; Rev. Rul. 80-230, 1980-2 C.B. 169; Rev. Rul.

79–410, 1979–2 C.B. 213, *amplified by* Rev. Rul. 2003–90, 2003–2 C.B. 353. Although an expense may be deductible before it is due and payable, liability for the expense first must be firmly established. *United States v. General Dynamics Corp.*, 481 U.S. 239, 243–4 (1987).

In *Washington Post Co. v. United States*, 405 F.2d 1279 (Ct. Cl. 1969), the United States Court of Claims held that a taxpayer incurred a liability to pay bonuses under a plan maintained for the benefit of its circulation dealers as a group. Under the plan, if a dealer did not meet certain specified conditions, a portion of the dealer's share would be forfeited and reallocated to other dealers. Thus, even though the amount and time of actual payout to individual recipients were, at least in part, not determined, the court held that the total amount of the liability was fixed at the end of the taxable year. In Rev. Rul. 76–345, 1976–2 C.B. 134, the Internal Revenue Service announced that it would not follow *Washington Post* in similar cases.

In *United States v. Hughes Properties, Inc.*, 476 U.S. 593 (1986), the Supreme Court allowed a casino operator to deduct amounts guaranteed for payment of progressive slot machine jackpots that had not yet been won by casino patrons. The Court reasoned that the taxpayer had a fixed obligation to pay the guaranteed amounts, and that the identification of the eventual recipients of the progressive jackpots was inconsequential. The Court noted that “[t]he obligation is there, and whether it turns out that the winner is one patron or another makes no conceivable difference as to basic liability.” *Hughes Properties*, 476 U.S. at 602.

ANALYSIS

X's liability to pay a minimum amount of bonuses to the group of eligible employees is fixed at the end of the year in which the services are rendered. X is obligated under the program to pay to the group the minimum amount of bonuses determined by the end of the taxable year. Any bonus allocable to an employee who is not employed on the date on which bonuses are paid is reallocated to other eligible employees. Thus, the fact of X's liability for the minimum amount of bonuses is established by the end of the year in which

the services are rendered. See Rev. Rul. 55-446, 1955-2 C.B. 531, as modified by Rev. Rul. 61-127, 1961-2 C.B. 36 (holding that bonuses payable to ascertainable employees under an incentive compensation plan that has been communicated to the employees, the exact amounts of which are determinable through a formula in effect prior to the end of the taxable year, are properly accruable for Federal income tax purposes for the year to which they relate). This is true even though the identity of the ultimate recipients and the amount, if any, each employee will receive cannot be determined prior to the end of the taxable year. See *Hughes Properties, supra*. Accordingly, for purposes of the first prong of the all events test under § 1.461-1(a)(2)(i), all the events have occurred by the end of the taxable year that establish the fact of X's liability to pay the minimum amount of bonuses.

HOLDING

An employer can establish the “fact of the liability” under § 461 for bonuses payable to a group of employees even though the employer does not know the identity of any particular bonus recipient and the amount payable to that recipient until after the end of the taxable year.

APPLICATION

Any change in a taxpayer's treatment of bonuses to conform with this revenue ruling is a change in method of accounting that must be made in accordance with §§ 446 and 481, the regulations thereunder, and the applicable administrative procedures. See section 19.01(2) of the AP-PENDIX of Rev. Proc. 2011–14, 2011–4 I.R.B. 330, 403.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 76–345 is revoked.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jason D. Kristall of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Kristall at (202) 622–5020 (not a toll-free call).

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 December 2011. See Rev. Rul. 2011-31, page 829.

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 December 2011. See Rev. Rul. 2011-31, page 829.

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 December 2011. See Rev. Rul. 2011-31, page 829.

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 December 2011. See Rev. Rul. 2011-31, page 829.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2011. See Rev. Rul. 2011-31, page 829.

Section 671.—Trust Income, Deductions, and Credits Attributable to Grantors and Others as Substantial Owners

26 CFR 1.671–1: *Grantors and others treated as substantial owners; scope.*

Rules are provided under which trusts for Indian tribal members who are minors or legally incompetent for the distribution of gaming revenues under the Indian Gaming Regulatory Act are treated as grantor trusts of which the tribe is the grantor and owner. See Rev. Proc. 2011-56, page 834.

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 December 2011. See Rev. Rul. 2011-31, page 829.

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 December 2011. See Rev. Rul. 2011-31, page 829.

Section 995.—Taxation of DISC Income to Shareholders

2011 base period T-bill rate. The “base period T-bill rate” for the period ending September 30, 2011, is published as required by section 995(f) of the Code.

Rev. Rul. 2011-30

Section 995(f)(1) of the Internal Revenue Code provides that a shareholder of a DISC shall pay interest each taxable year in an amount equal to the product of the shareholder’s DISC-related deferred tax liability for the year and the “base period T-bill rate.” Under section 995(f)(4), the base period T-bill rate is the annual rate of interest determined by the Secretary to be equivalent to the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder. The base period T-bill rate for the period ending September 30, 2011, is 0.22 percent.

Pursuant to section 6222 of the Code, interest must be compounded daily. The table below provides factors for compounding the base period T-bill rate daily for any number of days in the shareholder’s taxable year (including a 52–53 week accounting period) for the 2011 base period T-bill rate. To compute the amount of the interest charge for the shareholder’s taxable year, multiply the amount of the shareholder’s DISC-related deferred tax liability (as defined in section 995(f)(2)) for that year by the base period T-bill rate factor corresponding to the number of days in the shareholder’s taxable year for

which the interest charge is being computed. Generally, one would use the factor for 365 days. One would use a different factor only if the shareholder’s taxable year for which the interest charge being determined is a short taxable year, if the shareholder uses the 52–53 week taxable year, or if the shareholder’s taxable year is a leap year.

For the base period T-bill rates for the periods ending in prior years, see Rev. Rul. 2010–28, 2010–49 I.R.B. 804; Rev. Rul. 2009–36, 2009–47 I.R.B. 650; Rev. Rul. 2008–51, 2008–2 C.B. 1171; Rev. Rul. 2007–64, 2007–2 C.B. 953; and Rev. Rul. 2006–54, 2006–2 C.B. 834.

DRAFTING INFORMATION

The principal author of this revenue ruling is Teresa Burrridge Hughes of the Office of Associate Chief Counsel (International). For further information regarding this revenue ruling, contact Teresa B. Hughes at (202) 622–3850 (not a toll-free call).

2011 ANNUAL RATE, COMPOUNDED DAILY

0.22 PERCENT

DAYS	FACTOR
26	.000156724
27	.000162752
28	.000168781
29	.000174809
30	.000180838
31	.000186866
32	.000192895
33	.000198923
34	.000204952
35	.000210981
36	.000217009
37	.000223038
38	.000229067
39	.000235095
40	.000241124
41	.000247153
42	.000253182
43	.000259211
44	.000265240
45	.000271269
46	.000277298
47	.000283327
48	.000289356
49	.000295385
50	.000301414
51	.000307444
52	.000313473
53	.000319502
54	.000325531
55	.000331561
56	.000337590
57	.000343620
58	.000349649
59	.000355679
60	.000361708
61	.000367738
62	.000373767
63	.000379797
64	.000385827
65	.000391856
66	.000397886
67	.000403916
68	.000409946
69	.000415976
70	.000422006
71	.000428035
72	.000434065
73	.000440095
74	.000446126
75	.000452156

2011 ANNUAL RATE, COMPOUNDED DAILY

0.22 PERCENT

DAYS	FACTOR
1	.000006027
2	.000012055
3	.000018082
4	.000024110
5	.000030137
6	.000036165
7	.000042193
8	.000048220
9	.000054248
10	.000060276
11	.000066303
12	.000072331
13	.000078359
14	.000084387
15	.000090415
16	.000096443
17	.000102471
18	.000108499
19	.000114527
20	.000120555
21	.000126583
22	.000132611
23	.000138639
24	.000144668
25	.000150696

2011 ANNUAL RATE,
COMPOUNDED DAILY

0.22 PERCENT

DAYS	FACTOR
76	.000458186
77	.000464216
78	.000470246
79	.000476276
80	.000482307
81	.000488337
82	.000494367
83	.000500398
84	.000506428
85	.000512458
86	.000518489
87	.000524519
88	.000530550
89	.000536581
90	.000542611
91	.000548642
92	.000554673
93	.000560703
94	.000566734
95	.000572765
96	.000578796
97	.000584827
98	.000590858
99	.000596889
100	.000602920
101	.000608951
102	.000614982
103	.000621013
104	.000627044
105	.000633075
106	.000639106
107	.000645138
108	.000651169
109	.000657200
110	.000663232
111	.000669263
112	.000675294
113	.000681326
114	.000687357
115	.000693389
116	.000699420
117	.000705452
118	.000711484
119	.000717515
120	.000723547

2011 ANNUAL RATE,
COMPOUNDED DAILY

0.22 PERCENT

DAYS	FACTOR
121	.000729579
122	.000735611
123	.000741643
124	.000747674
125	.000753706
126	.000759738
127	.000765770
128	.000771802
129	.000777834
130	.000783866
131	.000789898
132	.000795931
133	.000801963
134	.000807995
135	.000814027
136	.000820060
137	.000826092
138	.000832124
139	.000838157
140	.000844189
141	.000850222
142	.000856254
143	.000862287
144	.000868319
145	.000874352
146	.000880385
147	.000886417
148	.000892450
149	.000898483
150	.000904516
151	.000910549
152	.000916581
153	.000922614
154	.000928647
155	.000934680
156	.000940713
157	.000946746
158	.000952780
159	.000958813
160	.000964846
161	.000970879
162	.000976912
163	.000982946
164	.000988979
165	.000995012

2011 ANNUAL RATE,
COMPOUNDED DAILY

0.22 PERCENT

DAYS	FACTOR
166	.001001046
167	.001007079
168	.001013113
169	.001019146
170	.001025180
171	.001031213
172	.001037247
173	.001043280
174	.001049314
175	.001055348
176	.001061382
177	.001067415
178	.001073449
179	.001079483
180	.001085517
181	.001091551
182	.001097585
183	.001103619
184	.001109653
185	.001115687
186	.001121721
187	.001127755
188	.001133790
189	.001139824
190	.001145858
191	.001151892
192	.001157927
193	.001163961
194	.001169995
195	.001176030
196	.001182064
197	.001188099
198	.001194133
199	.001200168
200	.001206203
201	.001212237
202	.001218272
203	.001224307
204	.001230342
205	.001236376
206	.001242411
207	.001248446
208	.001254481
209	.001260516
210	.001266551

2011 ANNUAL RATE,
COMPOUNDED DAILY

0.22 PERCENT

DAYS	FACTOR
211	.001272586
212	.001278621
213	.001284656
214	.001290691
215	.001296727
216	.001302762
217	.001308797
218	.001314832
219	.001320868
220	.001326903
221	.001332938
222	.001338974
223	.001345009
224	.001351045
225	.001357080
226	.001363116
227	.001369151
228	.001375187
229	.001381223
230	.001387259
231	.001393294
232	.001399330
233	.001405366
234	.001411402
235	.001417438
236	.001423474
237	.001429510
238	.001435546
239	.001441582
240	.001447618
241	.001453654
242	.001459690
243	.001465726
244	.001471762
245	.001477799
246	.001483835
247	.001489871
248	.001495908
249	.001501944
250	.001507981
251	.001514017
252	.001520054
253	.001526090
254	.001532127
255	.001538163

2011 ANNUAL RATE,
COMPOUNDED DAILY

0.22 PERCENT

DAYS	FACTOR
256	.001544200
257	.001550237
258	.001556274
259	.001562310
260	.001568347
261	.001574384
262	.001580421
263	.001586458
264	.001592495
265	.001598532
266	.001604569
267	.001610606
268	.001616643
269	.001622680
270	.001628717
271	.001634754
272	.001640792
273	.001646829
274	.001652866
275	.001658904
276	.001664941
277	.001670979
278	.001677016
279	.001683054
280	.001689091
281	.001695129
282	.001701166
283	.001707204
284	.001713242
285	.001719279
286	.001725317
287	.001731355
288	.001737393
289	.001743431
290	.001749468
291	.001755506
292	.001761544
293	.001767582
294	.001773620
295	.001779659
296	.001785697
297	.001791735
298	.001797773
299	.001803811
300	.001809850

2011 ANNUAL RATE,
COMPOUNDED DAILY

0.22 PERCENT

DAYS	FACTOR
301	.001815888
302	.001821926
303	.001827965
304	.001834003
305	.001840041
306	.001846080
307	.001852118
308	.001858157
309	.001864196
310	.001870234
311	.001876273
312	.001882312
313	.001888350
314	.001894389
315	.001900428
316	.001906467
317	.001912506
318	.001918545
319	.001924584
320	.001930623
321	.001936662
322	.001942701
323	.001948740
324	.001954779
325	.001960818
326	.001966857
327	.001972897
328	.001978936
329	.001984975
330	.001991015
331	.001997054
332	.002003093
333	.002009133
334	.002015172
335	.002021212
336	.002027251
337	.002033291
338	.002039331
339	.002045370
340	.002051410
341	.002057450
342	.002063490
343	.002069530
344	.002075569
345	.002081609

2011 ANNUAL RATE,
COMPOUNDED DAILY

0.22 PERCENT

DAYS	FACTOR
346	.002087649
347	.002093689
348	.002099729
349	.002105769
350	.002111809
351	.002117850
352	.002123890
353	.002129930
354	.002135970
355	.002142010
356	.002148051
357	.002154091
358	.002160131
359	.002166172
360	.002172212
361	.002178253
362	.002184293
363	.002190334
364	.002196374
365	.002202415
366	.002208456
367	.002214497
368	.002220537

2011 ANNUAL RATE,
COMPOUNDED DAILY

0.22 PERCENT

DAYS	FACTOR
369	.002226578
370	.002232619
371	.002238660

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 December 2011.

Rev. Rul. 2011-31

This revenue ruling provides various prescribed rates for federal income tax purposes for December 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%. 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. Finally, Table 6 contains the 2012 interest rate for sections 846 and 807.

REV. RUL. 2011-31 TABLE 1

Applicable Federal Rates (AFR) for December 2011

	Period for Compounding			
	Annual	Semiannual	Quarterly	Monthly
<i>Short-term</i>				
AFR	.20%	.20%	.20%	.20%
110% AFR	.22%	.22%	.22%	.22%
120% AFR	.24%	.24%	.24%	.24%
130% AFR	.26%	.26%	.26%	.26%
<i>Mid-term</i>				
AFR	1.27%	1.27%	1.27%	1.27%
110% AFR	1.40%	1.40%	1.40%	1.40%
120% AFR	1.53%	1.52%	1.52%	1.52%
130% AFR	1.66%	1.65%	1.65%	1.64%
150% AFR	1.92%	1.91%	1.91%	1.90%
175% AFR	2.23%	2.22%	2.21%	2.21%
<i>Long-term</i>				
AFR	2.80%	2.78%	2.77%	2.76%
110% AFR	3.08%	3.06%	3.05%	3.04%
120% AFR	3.37%	3.34%	3.33%	3.32%
130% AFR	3.64%	3.61%	3.59%	3.58%

REV. RUL. 2011-31 TABLE 2				
Adjusted AFR for December 2011				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.45%	.45%	.45%	.45%
Mid-term adjusted AFR	1.69%	1.68%	1.68%	1.67%
Long-term adjusted AFR	3.55%	3.52%	3.50%	3.49%

REV. RUL. 2011-31 TABLE 3	
Rates Under Section 382 for December 2011	
Adjusted federal long-term rate for the current month	3.55%
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.)	3.55%

REV. RUL. 2011-31 TABLE 4	
Appropriate Percentages Under Section 42(b)(1) for December 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	7.47%
Appropriate percentage for the 30% present value low-income housing credit	3.20%

REV. RUL. 2011-31 TABLE 5	
Rate Under Section 7520 for December 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	1.6%

REV. RUL. 2011-31 TABLE 6	
Rates Under Sections 846 and 807	
Applicable rate of interest for 2012 for purposes of sections 846 and 807	2.89%

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 December 2011. See Rev. Rul. 2011-31, page 829.

Section 2042.—Proceeds of Life Insurance

26 CFR 20.2042-1: *Proceeds of life insurance.*

Substitution of insurance policy. This ruling provides guidance regarding whether a grantor's retention of a power, exercisable in a nonfiduciary capacity, to acquire an insurance policy held by a trust by substituting other assets of equivalent value will cause the value of the insurance policy to be includible in the grantor's gross estate under section 2042 of the

Code. The ruling provides that a grantor's retention of the power, exercisable in a nonfiduciary capacity, to acquire an insurance policy held in trust by substituting other assets of equivalent value will not, by itself, cause the value of the insurance policy to be includible in the grantor's gross estate under section 2042, provided the trustee has a fiduciary obligation (under local law or the trust instrument) to ensure the grantor's compliance with the terms of this power by satisfying itself that the properties acquired and substituted by

the grantor are in fact of equivalent value, and further provided that the substitution power cannot be exercised in a manner that can shift benefits among the trust beneficiaries.

Rev. Rul. 2011-28

ISSUE

Whether a grantor's retention of the power, exercisable in a nonfiduciary capacity, to acquire an insurance policy held by a trust by substituting other assets of equivalent value will cause the value of the insurance policy to be includible in the grantor's gross estate under § 2042 of the Internal Revenue Code.

FACTS

D, a United States citizen, established and funded Trust with cash. Thereafter, Trust purchased a life insurance policy on *D*'s life. Trust is an irrevocable trust for the benefit of *D*'s descendants. *T* is the trustee of Trust, and the terms of Trust prohibit *D* from serving as trustee of Trust. *D* makes gifts every year to Trust, and Trust pays the premium on the insurance policy. The proceeds of the policy are payable to Trust upon *D*'s death.

D cannot revoke, alter, amend, or terminate the trust. The governing instrument of Trust, however, provides *D* with the power, exercisable at any time, to acquire any property held in Trust by substituting other property of equivalent value. The trust instrument provides that the power is exercisable by *D* in a nonfiduciary capacity, without the approval or consent of any person acting in a fiduciary capacity. To exercise the power of substitution, *D* must certify in writing that the substituted property and the Trust property for which it is substituted are of equivalent value. In addition, under local law, *T* has a fiduciary obligation to ensure that the property that *D* seeks to substitute is equivalent in value to the property distributed to *D*. Moreover, if a trust has two or more beneficiaries, local law requires the trustee to act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries. Finally, under local law and without restriction in the trust instrument, *T* has the discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, di-

vide, partition, and manage the trust property in accordance with the standards provided by law.

D has no incidents of ownership in the insurance policy unless *D*'s right of substitution is considered an incident of ownership. *D* dies without having exercised the power to substitute with respect to the life insurance policy.

LAW AND ANALYSIS

Section 2042(2) provides that the value of the gross estate includes the value of all property to the extent of the amount receivable as insurance under policies on the life of the decedent by beneficiaries (other than the executor), with respect to which the decedent possessed at decedent's date of death any of the incidents of ownership in the policies, exercisable either alone or in conjunction with any other person.

Section 20.2042-1(c)(2) of the Estate Tax Regulations provides that the meaning of the term "incidents of ownership" is not confined to ownership of the policy in the technical legal sense. Generally speaking, the term refers to the right of the insured or the insured's estate to the economic benefits of the policy. Thus, the term includes without limitation the power to change the beneficiary, to surrender or cancel the policy, to assign the policy, to revoke an assignment, to pledge the policy for a loan, or to obtain from the insurer a loan against the surrender value of the policy.

Section 20.2042-1(c)(4) provides that a decedent is considered to have an incident of ownership in a policy held in trust if, under the terms of the policy, the decedent (either alone or in conjunction with another person) has the power (as trustee or otherwise) to change the beneficial ownership in the policy or its proceeds, or the time or manner of enjoyment thereof, even though the decedent has no beneficial interest in the trust. Moreover, assuming the decedent created the trust, such a power may result in the inclusion in the decedent's gross estate under § 2036 or 2038 of other property transferred by the decedent to the trust if, for example, the decedent has the power to surrender the insurance policy and if the income otherwise used to pay premiums on the policy would become currently payable to a beneficiary of the trust in the event that the policy were surrendered.

In Rev. Rul. 84-179, 1984-2 C.B. 195, the decedent purchased an insurance policy on his life and transferred all incidents of ownership to his spouse. His spouse designated their adult child as the policy beneficiary. Subsequently, the spouse died and her will established a residuary trust for the benefit of the child. The decedent was designated the trustee of this trust. The insurance policy on the decedent's life, which was part of the residuary estate, passed to the testamentary trust. As trustee, the decedent had broad discretionary powers in the management of the trust property and the power to distribute or accumulate income. Under the terms of the policy, the owner could elect to have the proceeds made payable according to various plans, use the loan value to pay the premiums, borrow on the policy, assign or pledge the policy, and elect to receive annual dividends. The will did not preclude the decedent from exercising these powers, although the decedent could not do so for his own benefit. The decedent paid the premiums on the policy out of other trust property and was still serving as trustee when he died.

Citing the legislative history of § 2042(2), the ruling states that Congress intended § 2042 to parallel the statutory scheme governing those powers that would cause other types of property to be included in a decedent's estate under §§ 2036 and 2038. Section 2036 applies to the transfer of property where rights or powers are retained incident to the transfer, and § 2038 pertains to situations where property is transferred and power over the property subsequently returns to the transferor-decedent.

Under the facts in Rev. Rul. 84-179, the decedent transferred the policy to his wife and subsequently, in an unrelated transaction, reacquired incidents of ownership over the policy in a fiduciary capacity. The ruling holds that the decedent will not be considered to possess incidents of ownership in the policy for purposes of § 2042(2), provided the decedent could not exercise the powers for the decedent's personal benefit, the decedent did not transfer the policy or any of the consideration for purchasing or maintaining the policy to the trust from personal assets, and the devolution of the powers to the decedent was not part of a prearranged plan involving the participation of decedent.

The ruling further states, however, that the decedent will be deemed to have incidents of ownership over an insurance policy on the decedent's life where decedent's powers are held in a fiduciary capacity and the decedent has transferred the policy or any of the consideration for purchasing and maintaining the policy to the trust. Also, where the decedent's powers could have been exercised for decedent's benefit, they will constitute incidents of ownership in the policy, without regard to how those powers were acquired and without consideration of whether the decedent transferred property to the trust. Thus, in such a situation, if the decedent reacquires powers over insurance policies in an individual capacity, the powers will constitute incidents of ownership even though the decedent is a transferee. See *Estate of Fruehauf v. Commissioner*, 427 F.2d 80 (6th Cir. 1970); *Estate of Skifter v. Commissioner*, 468 F.2d 699 (2d Cir. 1972).

In *Estate of Jordahl v. Commissioner*, 65 T.C. 92 (1975), *acq. in result*, 1977-2 C.B. 1, the decedent created an *inter vivos* trust. The *corpus* of the trust included insurance policies on the decedent's life and other income producing assets. Under the terms of the trust, the decedent reserved the power to substitute other securities or property for those held in trust, provided the substituted property was equal in value to the property replaced. After the decedent's death, the Service argued that the trust assets were includible in the decedent's gross estate under § 2038 because the decedent's power to substitute assets of equal value could be exercised to alter the beneficial interests in the trust. The Service also argued that the proceeds from the insurance policies should also be included under § 2042(2) because the power to substitute the insurance policies allowed the decedent to reacquire full ownership of the policies in the trust.

The Tax Court determined that, because the decedent was bound by fiduciary standards and was therefore accountable in equity to the succeeding income beneficiary and remaindermen, the decedent could not exercise the power to deplete the trust or to shift trust benefits among the beneficiaries. Accordingly, the Court held that the substitution power was not a power to alter, amend, or revoke the trust within the

meaning of § 2038. The court further concluded that the decedent's power to substitute an insurance policy was merely a power to exchange at arm's length. The Court held that such a power was in effect a right to purchase the policy and that such a right could not be considered an incident of ownership.

In Rev. Rul. 2008-22, 2008-16 I.R.B. 796, the grantor created an irrevocable *inter vivos* trust for the benefit of the grantor's descendants. The grantor retained the power, exercisable in a nonfiduciary capacity, to acquire any property held in the trust by substituting other property of equivalent value. The ruling concludes that the grantor's retained power to substitute assets of equivalent value will not, by itself, cause the value of the trust corpus to be includible in the grantor's gross estate under § 2036 or 2038, provided the trustee has a fiduciary obligation (under local law or the trust instrument) to ensure the grantor's compliance with the terms of this power by satisfying itself that the properties acquired and substituted by the grantor are in fact of equivalent value. The ruling further provides that the substitution power cannot be exercised in a manner that would cause the shifting of benefits among the trust beneficiaries.

In the instant case, like the situation presented in Rev. Rul. 2008-22, the trust instrument expressly prohibits *D* from serving as trustee and states that *D*'s power to substitute assets of equivalent value is held in a nonfiduciary capacity. However, under the terms of Trust, the assets that *D* may transfer into Trust must be equivalent in value to the insurance policies that *D* will receive. In addition, *T* has a fiduciary obligation to ensure that the assets substituted are of equivalent value. Thus, *D* cannot exercise the power to substitute assets in a manner that will reduce the value of the trust corpus or increase *D*'s net worth. Further, in view of *T*'s ability to reinvest the assets and *T*'s duty of impartiality to the trust beneficiaries, there will be no shifting of benefits between or among the beneficiaries that could otherwise result from a substitution of property by *D*. Under these circumstances, *D*'s retained power to substitute assets of equivalent value for a life insurance policy held

by Trust is not, by itself, an incident of ownership under § 2042(2).

HOLDING

A grantor's retention of the power, exercisable in a nonfiduciary capacity, to acquire an insurance policy held in trust by substituting other assets of equivalent value will not, by itself, cause the value of the insurance policy to be includible in the grantor's gross estate under § 2042, provided the trustee has a fiduciary obligation (under local law or the trust instrument) to ensure the grantor's compliance with the terms of this power by satisfying itself that the properties acquired and substituted by the grantor are in fact of equivalent value, and further provided that the substitution power cannot be exercised in a manner that can shift benefits among the trust beneficiaries. A substitution power cannot be exercised in a manner that can shift benefits if: (a) the trustee has both the power (under local law or the trust instrument) to reinvest the trust corpus and a duty of impartiality with respect to the trust beneficiaries; or (b) the nature of the trust's investments or the level of income produced by any or all of the trust's investments does not impact the respective interests of the beneficiaries, such as when the trust is administered as a unitrust (under local law or the trust instrument) or when distributions from the trust are limited to discretionary distributions of principal and income.

DRAFTING INFORMATION

The principal author of this revenue ruling is Mayer Samuels of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Samuels at (202) 622-3090 (not a toll-free call).

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2011. See Rev. Rul. 2011-31, page 829.

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 December 2011. See Rev. Rul. 2011-31, page 829.

Part III. Administrative, Procedural, and Miscellaneous

Application of General Welfare Exclusion to Benefits Provided Under Indian Tribal Government Programs

Notice 2011-94

PURPOSE

This notice invites comments concerning the application of the general welfare exclusion to Indian tribal government programs that provide benefits to tribal members.

BACKGROUND

Section 61(a) of the Internal Revenue Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived. The Internal Revenue Service has consistently held, however, under a limited general welfare exclusion (the exclusion), that payments under governmental social benefit programs for the promotion of the general welfare are not includible in a recipient's gross income. Rev. Rul. 2009-19, 2009-28 I.R.B. 111; Rev. Rul. 98-19, 1998-1 C.B. 840; Rev. Rul. 74-205, 1974-1 C.B. 20. To qualify under the exclusion, the payments must (1) be made to an individual under a governmental program, (2) be for the promotion of the general welfare (that is, based on need), and (3) not represent compensation for services. Rev. Rul. 2003-12, 2003-1 C.B. 283; Rev. Rul. 2005-46, 2005-2 C.B. 120.

E.O. 13175 (November 6, 2000) requires Federal agencies to consult with tribal officials before formulating and implementing policies that have tribal implications.

REQUEST FOR COMMENTS

The Service has received inquiries from Indian tribal governments about the application of the exclusion to tribal government programs that provide benefits to tribal members. These programs may include, but are not limited to:

- Housing (for example, programs providing housing on and off the reservation, with income limits different from

those of the United States Department of Housing and Urban Development);

- Cultural (for example, programs involving tours of sites that are historically significant to a tribe; language preservation programs; community recreational programs; cultural and social events);
- Education (for example, programs providing tutors or supplies to primary and secondary school students; job retraining programs for adults);
- Elder programs (for example, programs providing heating assistance or meals).

In response to these inquiries, and to provide clarity and certainty to Indian tribal governments and consistency in applying the exclusion, the Service and the Treasury Department are considering issuing guidance. Pursuant to E.O. 13175, comments are invited describing actual or proposed Indian tribal government programs that provide benefits to members and the application of the exclusion to these programs and benefits.

Comments may be submitted in writing on or before February 13, 2012. Comments should be submitted to Internal Revenue Service, CC:PA:LPD:PR (Notice 2011-94), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, or electronically to Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2011-94" in the subject line of any electronic communications. Alternatively,

comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2011-94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, D.C. All comments will be available for public inspection and copying.

DRAFTING INFORMATION

The principal author of this notice is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information, please con-

tact Mr. Iskow at (202) 622-4920 (not a toll-free call).

26 CFR 601.601: Rules and regulations.

(Also Part I, §§ 61, 451, 671; 1.61-1; 1.451-1; 1.671-1.)

Rev. Proc. 2011-56

SECTION 1. PURPOSE AND CHANGES

.01 Purpose.

(1) This revenue procedure clarifies, modifies, and supersedes Rev. Proc. 2003-14, 2003-1 C.B. 319, which provides a safe harbor under which the Internal Revenue Service treats an Indian tribe as the grantor and owner of a trust for the receipt of gaming revenues under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701-2721) (IGRA) for the benefit of minors or legal incompetents. Under the safe harbor, beneficiaries of an IGRA trust are not required to include amounts in gross income under the economic benefit doctrine when transferred to, or earned by, the IGRA trust, but must include trust distributions in income when actually or constructively received.

(2) Rev. Proc. 2003-14 requested public comments. In response to those comments, this revenue procedure revises sections 5.02(5), 5.02(6), 5.02(8)(a), 5.02(8)(b), and 5.02(8)(e) of Rev. Proc. 2003-14, and adds a new section 5.02(9).

.02 Changes.

(1) Section 6 of Rev. Proc. 2003-14 added to Rev. Proc. 2003-3, 2003-1 C.B. 113, certain areas under § 451 and §§ 671-679 of the Internal Revenue Code in which the Service will not issue ruling or determination letters concerning IGRA trusts. Guidance superseding Rev. Proc. 2003-3 incorporates these no-rule areas. See sections 4.01(34), 4.01(41), 5.08, and 5.10 of Rev. Proc. 2011-3, 2011-1 I.R.B. 111, and its successors. Therefore, section 6 of Rev. Proc. 2003-14 is obsolete.

(2) Section 5.02(5) removes the references to federal and local trust law because the validity of trusts is governed by state or tribal law.

(3) Section 5.02(6) clarifies that an IGRA trust must be an ordinary trust for purposes of the federal tax laws.

(4) Section 5.02(8)(a) expressly allows a trust instrument to provide that the distributions to or for the benefit of minors or legal incompetents at the discretion of the trustee must comply with the requirements of 25 U.S.C. § 2710(b)(3) and 25 CFR § 290.12(b)(3).

(5) Section 5.02(8)(b) removes the term “contractual” because the rights created under an IGRA trust instrument are not contractual.

(6) Section 5.02(8)(e) expands the class of persons who may receive a deceased beneficiary’s share of the trust to include persons who receive property or interests under the beneficiary’s will or trust, or in accordance with state or tribal intestacy law.

(7) Section 5.02(9) expressly allows a trust instrument to provide for trust distributions at a specified age or ages or upon the occurrence or nonoccurrence of a specified event or events.

SECTION 2. BACKGROUND

.01 Indian tribes and their members have requested guidance on determining the taxable years in which beneficiaries must include in gross income amounts transferred to, or earned by, an IGRA trust, and under what circumstances a tribe will be considered the grantor and owner of an IGRA trust.

.02 Under § 451 and §§ 1.451–1(a) and 1.451–2 of the Income Tax Regulations, a taxpayer using the cash receipts and disbursements method of accounting must include gains, profits, and income in gross income for the taxable year in which those items are actually or constructively received. In addition, under the economic benefit doctrine, a taxpayer using the cash receipts and disbursements method of accounting must include in gross income currently any financial or economic benefit derived from the absolute right to receive property in the future that has been irrevocably and unconditionally set aside for the taxpayer in a trust or fund. *Sproull v. Commissioner*, 16 T.C. 244 (1951), *aff’d per curiam*, 194 F.2d 541 (6th Cir. 1952); *Pulsifer v. Commissioner*, 64 T.C. 245 (1975).

.03 Section 671 provides that, when specified under subpart E, part 1, subchapter J, chapter 1, subtitle A (subpart E) that a grantor or another person is treated as the owner of any portion of a trust, then the taxable income and credits of the grantor or other person includes the items of income, deductions, and credits of the trust attributable to that portion of the trust to the extent that these items are included in computing an individual’s taxable income or credits.

.04 IGRA provides rules regarding the conduct of class II and class III gaming on Indian lands within an Indian tribe’s jurisdiction and an Indian tribe’s use of revenues from that gaming. Under IGRA, an Indian tribe may use net revenues from any class II and class III gaming activities it conducts or licenses to make *per capita* payments to members of the Indian tribe only if: (1) the Indian tribe has prepared a plan to allocate revenues to authorized uses; (2) the Secretary of the Interior approves the plan as adequate; (3) the interests of minors and other legally incompetent persons who are entitled to receive any of the *per capita* payments are protected and preserved and the *per capita* payments are disbursed to the parents or legal guardians of the minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare of the minors or other legally incompetent persons under a plan approved by the Secretary of the Interior and the governing body of the Indian tribe; and (4) the *per capita* payments are subject to federal taxation and the Indian tribe notifies members of that tax liability when payments are made. Section 11(b)(3) and (d)(1)(A) of IGRA, 25 U.S.C. § 2710(b)(3) and (d)(1)(A).

SECTION 3. SCOPE

This revenue procedure applies to Indian tribes, IGRA trusts, and beneficiaries of IGRA trusts.

SECTION 4. DEFINITIONS

For purposes of this revenue procedure:

.01 *Indian tribe*. The term “Indian tribe” has the same meaning as in 25 U.S.C. § 2703(5).

.02 *IGRA trust*. An “IGRA trust” is a trust that an Indian tribe establishes under

IGRA to receive and invest *per capita* payments for its members who are minors or legal incompetents pending distribution of the trust assets to those members after they attain the age of majority or cease to be legal incompetents.

.03 *Minor and legal incompetent*. The terms “minor” and “legal incompetent” have the same meaning as in 25 CFR § 290.2 (relating to review of Indian tribal revenue allocation plans adopted under IGRA).

.04 *Per capita payment*. The term “*per capita* payment” has the same meaning as in 25 CFR § 290.2, but does not include compensation for services.

SECTION 5. APPLICATION

.01 *In general*. For any period in which each of the requirements of section 5.02 of this revenue procedure is met:

(1) The Service will treat an Indian tribe that establishes (or has established) an IGRA trust as the grantor and owner of the trust under subpart E, and

(2) The Service will not require beneficiaries of an IGRA trust to include *per capita* payments received by the trust, and any earnings on the *per capita* payments, in gross income until the taxable year that the beneficiaries actually or constructively receive the amounts under § 451 and the regulations thereunder.

.02 *Requirements and Options for IGRA trusts*.

(1) The Indian tribe has complied with the requirements of § 11(b)(3) of IGRA, 25 U.S.C. § 2710(b)(3), regarding the disbursement of *per capita* payments to members of the Indian tribe.

(2) All contributions to the trust are *per capita* payments disbursed under a revenue allocation plan that complies with the requirements of § 11(b)(3) of IGRA, 25 U.S.C. § 2710(b)(3).

(3) Each trust beneficiary is a member of the Indian tribe that establishes the trust.

(4) Each trust beneficiary is a minor or legal incompetent at the time of the establishment of a trust interest for the beneficiary, and all contributions to the trust for that beneficiary are made for the period that the beneficiary is a minor or legal incompetent.

(5) The trust is a valid trust under applicable state or tribal law and all of the ma-

terial terms and provisions of the trust are enforceable under that law.

(6) The trust satisfies the definition of an ordinary trust in § 301.7701-4(a) of the Procedure and Administration Regulations and the governing trust instrument states that the trust is intended to be a grantor trust, that the Indian tribe is the grantor of the trust (within the meaning of subpart E), and that the trust will be construed accordingly.

(7) The governing trust instrument grants to the Indian tribe a power, an interest, or a combination thereof, described in §§ 673 through 677, that would cause the Indian tribe to be treated as owner of the trust under subpart E.

(8) The governing trust instrument includes the following provisions.

(a) Trust assets are not available to or for the benefit of a beneficiary until the beneficiary ceases to be a minor or legal incompetent, except for distributions for the health, education, or welfare of the beneficiary made at the discretion of the trustee pursuant to the governing trust instrument. The trust instrument may provide that these discretionary distributions are made under a plan approved by the governing body of the Indian tribe meeting the requirements of 25 CFR § 290.12(b)(3) (requiring criteria for distributions and a dispute resolution process).

(b) Beneficiaries have no preferred claim on, or any beneficial ownership interest in, any assets of the trust; any rights created under the trust instrument are mere unsecured rights of beneficiaries against the Indian tribe; and at all times during the continuance of the trust, the principal and income of the trust are subject to claims of general creditors of the Indian tribe under applicable federal, state, local, and tribal law.

(c) The trustee shall cease payments to or for the benefit of beneficiaries and shall hold the assets of the trust for the benefit of the Indian tribe's general creditors throughout any period during which the trustee believes or has reason to believe that the Indian tribe is unable to pay its

debts as they become due, or is subject to a pending insolvency or bankruptcy proceeding.

(d) Amounts payable to or for the benefit of beneficiaries under the governing trust instrument may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution, or other legal or equitable process.

(e) The beneficiary's share will be paid to the Indian tribe if the beneficiary dies while a minor, legal incompetent, or before the conditions for full distribution provided in the governing trust instrument occur. However, the governing trust instrument may provide that the beneficiary's share may be paid pursuant to a valid will or trust of the beneficiary, or to persons who may inherit from the beneficiary under applicable state or tribal intestacy laws.

(9) The trust instrument may provide that after the beneficiary ceases to be a minor or legal incompetent, the trust may make distributions to or for the benefit of the beneficiary at a specified age or ages or upon the occurrence or nonoccurrence of a specified event or events.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for IGRA trusts established or amended on or after November 14, 2011. Taxpayers may apply this revenue procedure to IGRA trusts established before November 14, 2011, for taxable years for which the period of limitation on refund or credit under § 6511 has not expired.

SECTION 7. TRANSITION RELIEF

The Service will not treat as a taxable event under § 1001 a modification or amendment of an IGRA trust made to come within this revenue procedure.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2003-14 is clarified, modified, and superseded.

DRAFTING INFORMATION

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

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also Part I, § 42; 1.42-14.)

Rev. Proc. 2011-57

SECTION 1. PURPOSE

This revenue procedure publishes the amounts of unused housing credit carryovers allocated to qualified states under § 42(h)(3)(D) of the Internal Revenue Code for calendar year 2011.

SECTION 2. BACKGROUND

Rev. Proc. 92-31, 1992-1 C.B. 775, provides guidance to state housing credit agencies of qualified states on the procedure for requesting an allocation of unused housing credit carryovers under § 42(h)(3)(D). Section 4.06 of Rev. Proc. 92-31 provides that the Internal Revenue Service will publish in the Internal Revenue Bulletin the amount of unused housing credit carryovers allocated to qualified states for a calendar year from a national pool of unused credit authority (the National Pool). This revenue procedure publishes these amounts for calendar year 2011.

SECTION 3. PROCEDURE

The unused housing credit carryover amount allocated from the National Pool by the Secretary to each qualified state for calendar year 2011 is as follows:

<i>Qualified State</i>	<i>Amount Allocated</i>
California	570,425
Delaware	13,749
District of Columbia	9,213
Florida	287,882
Georgia	148,335
Illinois	196,460
Kansas	43,686
Kentucky	66,444
Louisiana	69,414
Maine	20,340
Maryland	88,404
Massachusetts	100,256
Michigan	151,336
Minnesota	81,213
Nebraska	27,965
Nevada	41,350
New Jersey	134,620
New York	296,714
North Carolina	146,051
Ohio	176,645
Oregon	58,661
Pennsylvania	194,496
South Carolina	70,823
Texas	385,024
Utah	42,320
Vermont	9,581
Virginia	122,510
Washington	102,965

EFFECTIVE DATE

This revenue procedure is effective for allocations of housing credit dollar amounts attributable to the National Pool component of a qualified state's housing credit ceiling for calendar year 2011.

DRAFTING INFORMATION

The principal author of this revenue procedure is Christopher J. Wilson of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue

procedure, contact Mr. Wilson at (202) 622-3040 (not a toll-free call).

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

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