

## **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. 2014-15, page 1095.**

This revenue ruling provides guidance to employers funding their retiree health benefits through a wholly owned subsidiary. The ruling concludes that the arrangement is insurance for federal income tax purposes.

#### **Rev. Rul. 2014-16, page 1097.**

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 June 2014.

#### **Rev. Rul. 2014-17, page 1093.**

This revenue ruling holds that tangible assets used in converting corn to fuel grade ethanol are properly included in asset class 49.5 of Rev. Proc. 87-56 for depreciation purposes.

### **EMPLOYEE PLANS**

#### **Notice 2014-37, page 1100.**

This notice provides guidance on an amendment to reflect the outcome of *United States v. Windsor*, 570 U.S. \_\_\_, 133 S. Ct. 2675 (2013) that is adopted after the beginning of a plan year that is effective during a plan year ("mid-year amendment") to a plan described in Internal Revenue Code ("Code") § 401(k)(12) or (13) ("§ 401(k) safe harbor plan") or § 401(m)(11) or (12) ("§ 401(m) safe harbor plan") of the Internal Revenue Code pursuant to Q&A-8; of Notice 2014-19, 2014-17 IRB 979.

### **ADMINISTRATIVE**

#### **Rev. Rul. 2014-17, page 1093.**

This revenue ruling holds that tangible assets used in converting corn to fuel grade ethanol are properly included in asset class 49.5 of Rev. Proc. 87-56 for depreciation purposes.

#### **Notice 2014-38, page 1100.**

This notice updates the appendix to Notice 2013-1, which lists the Indian tribes who have settled tribal trust cases against the United States. Notice 2012-60 originally was published in IRB 2012-41 (October 9, 2012). Notice 2012-60 was superceded by Notice 2013-1 IRB 2013-3, and the appendix to Notice 2013-1 was superceded by Notice 2013-16 (IRB 2013-14), then Notice 2013-36, then Notice 2013-55, and then Notice 2014-22. However, an additional tribe has settled its case against the United States since the publication of Notice 2014-22, so we are publishing an updated appendix to Notice 2013-1. This notice supercedes Notice 2014-22.

Finding Lists begin on page ii.  
Index for July through June begins on page iv.

# The IRS Mission

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

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 June 2014. See Rev. Rul. 2014–16, page 1097.

## Section 167.—Depreciation

Depreciation based on class lives and asset depreciation ranges for property placed in service after December 31, 1970.

## Section 168.— Accelerated Cost Recovery System

26 CFR 1.168(a)–1: Modified accelerated cost recovery system. (Also § 167, 1.167(a)–11)

## Rev. Rul. 2014–17

### ISSUE

What is the proper asset class under Rev. Proc. 87–56, 1987–2 C.B. 674, as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785, for the depreciation of tangible assets that are used in converting corn to fuel grade ethanol?

### FACTS

Taxpayer owns a facility operated primarily to produce fuel grade ethanol. Fuel grade ethanol is a colorless, flammable liquid that is an organic chemical, and a high octane alternative fuel source. Taxpayer produces fuel grade ethanol from corn.

Taxpayer grinds the corn into flour, mixes the resulting corn flour with water, increases the temperature, and adds enzymes to convert the starch in the solution to simple sugars. Taxpayer feeds the resulting mash (water, sugars, and non-convertible solids) into fermentation tanks where yeast is added. Over a period of several days the yeast metabolizes the sugars into ethanol and carbon dioxide (CO<sub>2</sub>). The CO<sub>2</sub> produced during fermentation may be collected, compressed, and sold as a by-product.

Taxpayer then sends the ethanol solution to distillation columns to separate the ethanol from the solids and water. After distillation, taxpayer produces fuel grade ethanol by further processing part of the output using dehydration to increase alcohol content. Dehydration is accomplished by using molecular sieves that separate the remaining water molecules from the ethanol. Once the dehydration is complete, Taxpayer blends the fuel grade ethanol with 2 to 5 percent denaturant (such as natural gasoline or unleaded gasoline) and sends it to storage pending sale.

Taxpayer also processes the solids and other liquids derived from the distillation to produce distillers grains, an animal feed supplement, which it sells. More than 50 percent of the economic output at Taxpayer's facility is from fuel grade ethanol production.

### LAW

#### Statutory Scheme

Section 167(a) of the Internal Revenue Code provides that there shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion and wear and tear of property used in a trade or business or held for the production of income.

The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168, which prescribes two methods of accounting for determining depreciation allowances: (1) the general depreciation system in § 168(a); and (2) the alternative depreciation system in § 168(g). Under either depreciation system, the depreciation deduction is computed by using a prescribed depreciation method, recovery period, and convention. This revenue ruling addresses the applicable recovery period.

The applicable recovery period for purposes of either § 168(a) or § 168(g) is determined by reference to class life or by statute. Section 168(i)(1) provides that the term “class life” means the class life (if any) that would apply to any property as of January 1, 1986, under former

§ 167(m) as if it were in effect and the taxpayer had made an election under that section. Prior to its revocation, § 167(m) provided that, if a taxpayer elected the asset depreciation range system of depreciation, the depreciation deduction would be computed based on the class life prescribed by the Secretary that reasonably reflected the anticipated useful life of that class of property to the industry or other group. Rev. Proc. 87–56 sets forth the class lives of property in effect as of January 1, 1986, that are necessary to compute depreciation under § 168.

#### Primary Use Test

Section 1.167(a)–11(b)(4)(iii)(b) of the Income Tax Regulations provides rules for classifying property under former § 167(m) and, under these rules, property is included in the asset class for the activity for which the property is primarily used (the “primary use” test). Property is classified according to its primary use even though the activity for which the property is primarily used is insubstantial in relation to all the activities of the taxpayer.

Courts have considered the “primary use” standard for asset classification under § 1.167(a)–11(b)(4)(iii)(b). See, e.g., *Clajon Gas Co, L.P. v. Commissioner*, 354 F.3d 786 (8<sup>th</sup> Cir. 2004). In applying the “primary use” test, courts have clarified that the actual purpose and function of an asset determines its asset class (a use-driven functional standard) rather than the terminology used to describe an asset.

#### Asset Classes

Rev. Proc. 87–56 sets forth the class lives of property that are necessary to compute the depreciation allowance under § 168. This revenue procedure establishes two broad categories of depreciable assets: (1) asset classes 00.11 through 00.4, which consist of specific assets used in all business activities (asset categories); and (2) asset classes 01.1 through 80.0, which consist of assets used in specific business activities (activity categories). The same item of depreciable property may fall

within both an asset category and an activity category, in which case the item is generally classified in the asset category. See *Norwest Corporation & Subsidiaries v. Commissioner*, 111 T.C. 105, 162 (1998).

Asset class 49.5 of Rev. Proc. 87-56, Waste Reduction and Resource Recovery Plants, includes assets used in the conversion of refuse or other solid waste or biomass to heat or to a solid, liquid, or gaseous fuel. This asset class also includes all process plant equipment and structures at the site used to (1) receive, handle, collect, and process refuse or other solid waste or biomass to a solid, liquid, or gaseous fuel, or (2) handle and burn refuse or other solid waste or biomass in a waterwall combustion system, oil or gas pyrolysis system, or refuse derived fuel system to create hot water, gas, steam, or electricity. Asset class 49.5 also includes material recovery and support assets used in refuse or solid refuse or solid waste receiving, collecting, handling, sorting, shredding, classifying, and separation systems. Asset class 49.5 does not include any package boilers, or electric generators and related assets such as electricity, hot water, steam, and manufactured gas production plants classified in classes 00.4, 49.13, 49.221, and 49.4 of Rev. Proc. 87-56. Asset class 49.5 includes, however, all other utilities such as water supply and treatment facilities, ash handling, and other related land improvements of a waste reduction and resource recovery plant. Assets in class 49.5 have a recovery period of 7 years for purposes of § 168(a) and 10 years for purposes of § 168(g).

Asset class 28.0 of Rev. Proc. 87-56, Manufacture of Chemicals and Allied Products, includes assets used to manufacture basic organic and inorganic chemicals; chemical products to be used in further manufacture, such as synthetic fibers and plastics materials; and finished chemical products. This asset class also includes, among other things, all land improvements associated with plant site or production processes, such as effluent ponds and canals, provided such land improvements are depreciable but does not include buildings and structural compo-

nents as defined in § 1.48-1(e). Asset class 28.0 does not include assets used in the manufacture of finished rubber and plastic products or in the production of natural gas products, butane, propane, and by-products of natural gas production plants. Assets in class 28.0 have a recovery period of 5 years for purposes of § 168(a) and 9.5 years for purposes of § 168(g).

Rev. Rul. 77-63, 1977-1 C.B. 60, establishes that the mere use of a chemical process in the production of a product does not require an activity to be classified in asset class 28.0. That revenue ruling addresses the question of whether assets used to produce alumina are classified in asset class 33.2, Manufacture of Primary Nonferrous Metals, despite the fact that production used chemical processes. The chemical processes were part of the taxpayer's overall process of producing semi-finished and finished aluminum products from bauxite ore that the taxpayer mined. Asset class 33.2 includes assets used in the smelting, refining, and electrolysis of nonferrous metals from ore. Rev. Rul. 77-63 concludes that the chemical processes used to produce the alumina were an integral part of refining of the nonferrous metal and further concludes that all of the assets used in the processing of the bauxite ore into primary aluminum (basic metal), including those used in the chemical processes to produce alumina, are classified in asset class 33.2. However, the revenue ruling provides that assets used to process the alumina for use in activities other than those required to produce the basic metal should be classified in other asset classes.

#### ANALYSIS

Asset class 49.5 of Rev. Proc. 87-56 specifically applies to assets used in the conversion of biomass to a liquid fuel. Under energy credit provisions that were enacted near the same time asset class 49.5 was first established in 1979 by Rev. Proc. 79-26, 1979-1 C.B. 566, "biomass" means any organic substance other than oil, natural gas, coal, or product of oil or natural gas or coal. See § 48(l)(15)(B)(i), (l)(3)(B) as in effect on

the day before the date of enactment [11/5/90] of the Revenue Reconciliation Act of 1990, Pub. L. 101-508.<sup>1</sup> The depreciation and the former energy credit provisions of section 48(l) are both based on cost recovery concepts. Although § 48B(c)(4)(A) also includes a definition of biomass, that provision was enacted significantly later as part of the Energy Tax Incentives Act of 2005 (Pub. L. 109-58) and is specific to the production of synthesis gas. Accordingly, the definition of biomass in former § 48(l) is a more appropriate definition of biomass for purposes of asset class 49.5.

The corn used in Taxpayer's facility is biomass, that is, an organic substance other than oil, natural gas, coal, or a product thereof. Likewise, the fuel grade ethanol produced from corn (biomass) at Taxpayer's facility is liquid fuel for purposes of asset class 49.5.

Asset class 28.0 of Rev. Proc. 87-56, which includes assets used to manufacture basic chemicals, is not the appropriate asset class for Taxpayer's depreciable tangible assets that are used in converting corn to fuel grade ethanol, even though the interim product, ethanol, is an organic chemical. Taxpayer is primarily engaged in producing fuel grade ethanol, which is a liquid fuel, from corn, which is a biomass, at the facility. The production of ethanol by Taxpayer at the facility is integral to Taxpayer's production of the final product, fuel grade ethanol. The production of ethanol as an interim part of the production of fuel grade ethanol and the conversion of corn to fuel grade ethanol by chemical processes does not require classification in asset class 28.0 or preclude classification in the asset class that specifically applies to the conversion of biomass to fuel. Accordingly, under the "primary use" test of § 1.167(a)-11(b)(4)(iii)(b), Taxpayer's activity is described in asset class 49.5.

#### HOLDING

The proper asset class under Rev. Proc. 87-56 for depreciation of tangible assets used in converting corn to fuel grade ethanol is asset class 49.5 (other than § 1250 property not described in asset class 49.5

<sup>1</sup>In defining "biomass property," former § 48(l)(15), which was added to the Code in 1980, used (with some modifications) the definition of the term "alternate substance" in former § 48(l)(3), which was added to the Code in 1978.

and assets classified in asset classes 00.11 through 00.4 of Rev. Proc. 87-56).

#### COMMENTS RECEIVED ON PROPOSED REVENUE RULING

Notice 2009-64, 2009-36 I.R.B. 307 (September 8, 2009), proposed a revenue ruling concluding that ethanol plants should be depreciated using asset class 49.5 and requesting comments. Two comments were received and considered in finalizing this revenue ruling.

#### PROSPECTIVE APPLICATION

Pursuant to § 7805(b)(8), the Internal Revenue Service will not apply the holding in this revenue ruling to tangible assets that are used in converting biomass to a liquid fuel such as fuel grade ethanol that a taxpayer places in service before June 9, 2014.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Ruba Nasrallah of the Office of the Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue ruling, contact Charles Magee of the Office of the Associate Chief Counsel (Income Tax & Accounting) at (202) 317-7005 (not a toll-free number).

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### Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of June 2014. See Rev. Rul. 2014-16, page 1097.

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### 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 June 2014. See Rev. Rul. 2014-16, page 1097.

### Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2014. See Rev. Rul. 2014-16, page 1097.

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### 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 June 2014. See Rev. Rul. 2014-16, page 1097.

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### 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 June 2014. See Rev. Rul. 2014-16, page 1097.

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### 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 June 2014. See Rev. Rul. 2014-16, page 1097.

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### 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 June 2014. See Rev. Rul. 2014-16, page 1097.

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

Federal short-term, mid-term, and long-term rates are set forth for the month of June 2014. See Rev. Rul. 2014-16, page 1097.

### Section 801.—Tax Imposed Rev. Rul. 2014-15

#### ISSUE

Does the arrangement described below constitute insurance within the meaning of subchapter L of the Internal Revenue Code? If so, does the issuer qualify as an insurance company?

#### FACTS

X, a domestic corporation whose stock is widely held, provides health benefits within certain limits to a large group of named retired employees and their dependents, even though it is not legally obligated to do so, and may cancel the coverage at any time. X maintains a single-employer voluntary employees' beneficiary association that satisfies the requirements of § 501(c)(9) (VEBA) and makes a contribution to the VEBA to provide the health benefits. X deducts the contribution in accordance with, and to the extent permitted by, §§ 419 and 419A of the Code. X has complied with, and will continue to comply with, all requirements of the Employment Retirement Income Security Act of 1974, as amended (ERISA).

In connection with the provision of health benefits to retirees and their dependents and as an alternative to providing the benefits on a self-insured basis, the VEBA enters into Contract A with an unrelated commercial insurance company, IC. IC's participation in the arrangement is a condition of an exemption from the Department of Labor from certain of the prohibited transaction provisions of ERISA.

IC is taxable as a life insurance company under § 801 of the Code. Contract A provides noncancellable accident and health coverage. Under Contract A, IC will issue quarterly reimbursements to the VEBA for medical claims that are incurred by the covered retirees and their dependents and paid by the VEBA. Contract A is regulated by the relevant State insurance commissioner as an accident and health insurance contract. At the time that Contract A goes into effect, neither X nor the VEBA have any commitment or obligation to offer health benefits to the

covered retirees and their dependents, and both X and the VEBA may cancel any provided coverage at any time.

In an effort to keep the premium payment under Contract A affordable, IC then enters into Contract B with X's wholly owned subsidiary, S1, under which S1 receives a premium and reinsures 100 percent of IC's liabilities under Contract A. Contract B constitutes S1's sole business. S1 is regulated as an insurance company under state law, and Contract B is regulated as insurance. The amount of premium under Contract B is determined at arm's length in accordance with applicable insurance industry standards. S1 possesses adequate capital to fulfill its obligations to IC under Contract B. There are no guarantees that the VEBA or X will reimburse S1 with respect to its obligations under Contract B, nor is any of the premium received by S1 for Contract B loaned back to the VEBA or X. In all respects, the parties conduct themselves consistent with the standards applicable to an insurance arrangement between unrelated parties, except that S1 does not reinsure any other insurance contracts.

## LAW

Subchapter L of the Code sets forth the regime for taxing insurance companies. In particular, § 801(a) provides that a life insurance company must pay tax on its life insurance company taxable income, which is defined in § 801(b) to mean life insurance gross income less life insurance deductions. Section 816(a), in part, defines a life insurance company as an insurance company that has life insurance reserves and unearned premiums and unpaid losses on noncancellable life, accident, or health policies comprising more than 50 percent of total reserves. Under § 816(a), the term "insurance company" means any company more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. Section 831(c) applies the same definition of "insurance company" to determine whether a taxpayer is an insurance company other than a life insurance company and therefore subject to tax under § 831(a).

Neither the Code nor the regulations define the terms "insurance" or "insurance

contract." The United States Supreme Court, however, has explained that for an arrangement to constitute insurance for federal income tax purposes, both risk shifting and risk distribution must be present. *Helvering v. Le Gierse*, 312 U.S. 531, 539 (1941).

The risk transferred must be risk of economic loss. *Allied Fidelity Corp. v. Commissioner*, 572 F.2d 1190, 1193 (7th Cir. 1978), cert. denied, 439 U.S. 835 (1978). The risk must contemplate the fortuitous occurrence of a stated contingency, *Commissioner v. Treganowan*, 183 F.2d 288, 290–91 (2d Cir. 1950), cert. denied, 340 U.S. 853 (1950), and must not be merely an investment or business risk. *Le Gierse*, 312 U.S. at 542; Rev. Rul. 89–96, 1989–2 C.B. 114.

Risk shifting occurs if a person facing the possibility of an economic loss transfers some or all of the financial consequences of the potential loss to the insurer, such that a loss by the insured does not affect the insured because the loss is offset by a payment from the insurer. *Clougherty Packing Co. v. Commissioner*, 811 F.2d 1297, 1300 (9th Cir. 1987). Risk distribution incorporates the statistical phenomenon known as the law of large numbers. *Id.* Distributing risk allows the insurer to reduce the possibility that a single costly claim will exceed the amount taken in as premiums and set aside for the payment of such a claim. *Id.* By assuming numerous, relatively small, independent risks that occur randomly over time, the insurer smoothes out losses to match more closely its receipt of premiums. *Id.*

Courts have recognized that risk distribution necessarily entails a pooling of premiums, so that a potential insured is not in significant part paying for its own risks. *Ocean Drilling & Exploration Co. v. United States*, 988 F.2d 1135, 1153 (Fed. Cir. 1993) ("Risk distribution involves spreading the risk of loss among policyholders."); see also *Beech Aircraft Corp. v. United States*, 797 F.2d 920, 922 (10th Cir. 1986) ("[R]isk distributing' means that the party assuming the risk distributes his potential liability, in part, among others."); *Crawford Fitting Co. v. United States*, 606 F.Supp. 136, 147 (N.D. Ohio 1985) ("[T]he court finds . . . that various nonaffiliated persons or entities facing risks similar but independent of those

faced by plaintiff were named insureds under the policy, enabling the distribution of risk thereunder."); *AMERCO and Subsidiaries v. Commissioner*, 96 T.C. 18, 41 (1991), *aff'd*, 979 F.2d 162 (9th Cir. 1992) ("The concept of risk-distributing emphasizes the pooling aspect of insurance: that it is the nature of an insurance contract to be part of a larger collection of coverages, combined to distribute risk between insureds."). Accordingly, Rev. Rul. 2005–40, 2005–2 C.B. 4, concludes that an arrangement under which an issuer contracts to indemnify the risks of a single policyholder does not qualify as insurance for federal income tax purposes because those risks are not, in turn, distributed among other insureds or policyholders. Similarly, Rev. Rul. 2002–89, 2002–C.B. 984, concludes that the requirements of risk shifting and risk distribution are not satisfied when a wholly owned subsidiary's agreement to indemnify the risks of its parent represents 90% of the subsidiary's business.

In Rev. Rul. 92–93, 1992–2 C.B. 45, modified by Rev. Rul. 2001–31, 2001–1 C.B. 1348, a parent corporation carried insurance on its employees' lives under a group-term life insurance contract purchased from its wholly owned insurance subsidiary. In concluding that the value of insurance was includible in the employees' gross income, the revenue ruling stated:

Although [parent corporation] purchased the group-term life insurance contract covering its employees from its wholly owned insurance subsidiary, S1, this fact does not cause the arrangement to be "self-insurance" because the economic risk of loss being insured shifted to S1 is not a risk of [parent corporation]. . . . This insurance on the employees' lives is an economic benefit to the employees since it relieves them of the expense of providing life insurance for themselves.

Revenue Ruling 92–93 states that "[t]he holdings of this revenue ruling also apply to accident and health insurance." See also Rev. Rul. 92–94, 1992–2 C.B. 144.

## ANALYSIS

To determine the nature of an arrangement for federal income tax purposes, it is necessary to consider all the facts and circumstances of a particular case, including the risks being shifted and distributed. The proper characterization of an arrange-

ment may determine whether the issuer qualifies as an insurance company for federal income tax purposes and whether amounts paid under such arrangement may be deductible.

In the situation above, the risks being indemnified are the covered retirees' and their dependents' risks of incurring medical expenses during retirement due to accident and health contingencies. Although the VEBA entered into Contract A, the covered retirees' health insurance is an economic benefit to the retirees since it relieves them of the expense of purchasing health insurance for themselves and their dependents. Furthermore, at the time that Contract A goes into effect, neither X nor the VEBA have any commitment or obligation to offer health benefits to the covered retirees and their dependents, and both X and the VEBA may cancel any provided coverage at any time. Consequently, the risks that are shifted in the situation above are those of the covered retirees and their dependents and not risks of the VEBA or X. These risks are reinsured by S1 under Contract B. The risks under Contract B are distributed among this large group of covered individuals, and the analyses of Rev. Rul. 2002-89 and Rev. Rul. 2005-40 are inapplicable. Accordingly, the risks under Contract B are insurance risks, and Contract B constitutes insurance for federal income tax purposes.

#### HOLDING

In the situation above, S1 is regulated as an insurance company under state law. Contract B constitutes insurance. Because Contract B is more than half of the business done by S1 during this year, S1 qualifies as an insurance company under Subchapter L for this taxable year.

This revenue ruling does not address whether the health benefits are provided through a self-insured medical reimbursement plan for purposes of the nondiscrimination rules under § 105(h) (see Treas. Reg. § 1.105-11(b)(1)(iii)).

This ruling also does not address the deductibility of a contribution by X to the VEBA under §§ 419 and 419A; whether S1, or any account held by IC or S1, with respect to Contract A or Contract B is a welfare benefit fund (as defined in § 419(e)); or the application of § 419A(g). Furthermore, because the arrangement described in this

revenue ruling provides welfare benefits through a VEBA, this ruling does not address certain issues that would arise if an employer provided welfare benefits other than through a VEBA, including whether an entity (or any account held by any person) that is part of such an arrangement is a welfare benefit fund or, if not, whether the arrangement is a plan deferring the receipt of compensation for purposes of §§ 404(a)(5) and 404(b).

#### EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 2002-89 and Rev. Rul. 2005-40 are distinguished.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Sheryl B. Flum of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling, contact Ms. Flum at (202) 317-6995 (not a toll-free number).

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### 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 June 2014. See Rev. Rul. 2014-16, page 1097.

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### 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 June 2014. See Rev. Rul. 2014-16, page 1097.

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### 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.)

### Rev. Rul. 2014-16

This revenue ruling provides various prescribed rates for federal income tax

purposes for June 2014 (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, with respect to housing credit dollar amount allocations made before January 1, 2014, 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. 2014–16 TABLE 1

Applicable Federal Rates (AFR) for June 2014

	<i>Annual</i>	<i>Period for Compounding</i>		
		<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
		<i>Short-term</i>		
AFR	.32%	.32%	.32%	.32%
110% AFR	.35%	.35%	.35%	.35%
120% AFR	.38%	.38%	.38%	.38%
130% AFR	.42%	.42%	.42%	.42%
		<i>Mid-term</i>		
AFR	1.91%	1.90%	1.90%	1.89%
110% AFR	2.10%	2.09%	2.08%	2.08%
120% AFR	2.29%	2.28%	2.27%	2.27%
130% AFR	2.49%	2.47%	2.46%	2.46%
150% AFR	2.87%	2.85%	2.84%	2.83%
175% AFR	3.36%	3.33%	3.32%	3.31%
		<i>Long-term</i>		
AFR	3.14%	3.12%	3.11%	3.10%
110% AFR	3.46%	3.43%	3.42%	3.41%
120% AFR	3.77%	3.74%	3.72%	3.71%
130% AFR	4.10%	4.06%	4.04%	4.03%

REV. RUL. 2014–16 TABLE 2

Adjusted AFR for June 2014

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.32%	.32%	.32%	.32%
Mid-term adjusted AFR	1.37%	1.37%	1.37%	1.37%
Long-term adjusted AFR	3.14%	3.12%	3.11%	3.10%

REV. RUL. 2014–16 TABLE 3

Rates Under Section 382 for June 2014

Adjusted federal long-term rate for the current month	3.14%
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.)	3.32%

REV. RUL. 2014–16 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for April 2014

Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2014, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.58%
Appropriate percentage for the 30% present value low-income housing credit	3.25%

REV. RUL. 2014–16 TABLE 5

Rate Under Section 7520 for June 2014

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 2.2%

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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 June 2014. See Rev. Rul. 2014–16, page 1097.

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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 June 2014. See Rev. Rul. 2014–16, page 1097.

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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 June 2014. See Rev. Rul. 2014–16, page 1097.

## Part III. Administrative, Procedural, and Miscellaneous

### Mid-Year Amendments to Safe Harbor Plans Pursuant to Notice 2014–19 with Respect to the Windsor Decision

#### Notice 2014–37

##### I. PURPOSE

This notice provides guidance on an amendment to reflect the outcome of *United States v. Windsor*, 570 U.S. \_\_\_, 133 S.Ct. 2675 (2013), that is adopted after the beginning of a plan year and is effective during a plan year (“mid-year amendment”) to a plan described in § 401(k)(12) or (13) (“§ 401(k) safe harbor plan”) or § 401(m)(11) or (12) (“§ 401(m) safe harbor plan”) of the Internal Revenue Code pursuant to Q&A–8 of Notice 2014–19, 2014–17 I.R.B. 979 (April 21, 2014).

##### II. BACKGROUND

Notice 2014–19 provides guidance on the application (including the retroactive application) of the *Windsor* decision and the holdings of Rev. Rul. 2013–17, 2013–38 I.R.B. 201 (Sept. 16, 2013), to retirement plans qualified under § 401(a).

Q&A–8 of Notice 2014–19 provides:

Q–8. What is the deadline to adopt a plan amendment pursuant to this notice?

A–8. The deadline to adopt a plan amendment pursuant to this notice is the later of (i) the otherwise applicable deadline under section 5.05 of Rev. Proc. 2007–44, or its successor, or (ii) December 31, 2014. Moreover, in the case of a governmental plan, any amendment made pursuant to this notice need not be ad-

opted before the close of the first regular legislative session of the legislative body with the authority to amend the plan that ends after December 31, 2014.

Under § 1.401(k)–3(e)(1) of the Treasury Regulations, a § 401(k) safe harbor plan must be adopted before the beginning of the plan year and be maintained throughout a full 12-month plan year, except as otherwise provided in § 1.401(k)–3(g) (relating to the reduction or suspension of safe harbor contributions) or in guidance of general applicability published in the Internal Revenue Bulletin. Under § 1.401(m)–3(f)(1), similar rules apply to § 401(m) safe harbor plans, including § 403(b) plans. The IRS has been asked whether a § 401(k) or (m) safe harbor plan may adopt a mid-year amendment pursuant to Q&A–8 of Notice 2014–19.

##### III. QUESTION AND ANSWER

May a sponsor of a § 401(k) or (m) safe harbor plan adopt a mid-year amendment pursuant to Q&A–8 of Notice 2014–19?

Yes. A plan will not fail to satisfy the requirements to be a § 401(k) or (m) safe harbor plan merely because the plan sponsor adopts a mid-year amendment pursuant to Q&A–8 of Notice 2014–19.

##### IV. EFFECT ON OTHER DOCUMENTS

Notice 2014–19 is amplified by providing further guidance with respect to safe harbor plan mid-year amendments.

##### V. DRAFTING INFORMATION

The principal authors of this notice are Angelique Carrington of the Employee Plans, Tax Exempt and Government En-

tities Division, and Jeremy Lamb of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Carrington at [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov) or Mr. Lamb at (202) 317-6700 (not a toll-free number).

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### Per Capita Payments from Proceeds of Settlements of Indian Tribal Trust Cases

#### Notice 2014–38

##### BACKGROUND

Notice 2013–1, 2013–3 IRB 281, provides guidance on the federal tax treatment of per capita payments that members of Indian tribes receive from proceeds of certain settlements of tribal trust cases between the United States and those Indian tribes. Additional tribes have settled tribal trust cases against the United States since publication of Notice 2013–1. This notice provides an updated Appendix that reflects the additional settlement agreements.

##### EFFECT ON OTHER DOCUMENTS

Notice 2013–1 Appendix is modified and superseded.

##### FURTHER INFORMATION

For further information regarding this notice, please contact Telly Meier at phone number (202) 317-8494 (not a toll-free number).

#### Appendix Tribes That Have Entered into Settlement Agreements of Tribal Trust Cases

1. Assiniboine and Sioux Tribes of the Fort Peck Reservation
2. Bad River Band of Lake Superior Chippewa Indians
3. Blackfeet Tribe of the Blackfeet Indian Reservation
4. Bois Forte Band of Chippewa
5. Cachil Dehe Band of Wintun Indians of the Colusa Rancheria
6. Chippewa Cree Tribe of the Rocky Boy’s Reservation
7. Coeur d’Alene Tribe

8. Confederated Salish and Kootenai Tribes
9. Confederated Tribes of Siletz Indians
10. Confederated Tribes of the Colville Reservation
11. Confederated Tribes of the Goshute Reservation
12. Crow Creek Sioux Tribe
13. Eastern Shawnee Tribe of Oklahoma
14. Hualapai Indian Tribe
15. Iowa Tribe of Kansas and Nebraska
16. Kaibab Band of Paiute Indians of Arizona
17. Kickapoo Tribe of Kansas
18. Lac Courte Oreilles Band of Lake Superior Chippewa Indians
19. Lac du Flambeau Band of Lake Superior Chippewa Indians
20. Leech Lake Band of Ojibwe
21. Lower Brule Sioux Tribe
22. Makah Indian Tribe of the Makah Reservation
23. Mescalero Apache Tribe
24. Minnesota Chippewa Tribe
25. Nez Perce Tribe
26. Nooksack Indian Tribe
27. Northern Cheyenne Tribe of Indians
28. Omaha Tribe of Nebraska
29. Passamaquoddy Tribe of Maine
30. Pawnee Nation
31. Prairie Band of Potawatomi Nation
32. Pueblo of Zia
33. Quechan Tribe of the Fort Yuma Reservation
34. Red Cliff Band of Lake Superior Chippewa Indians
35. Rincon Luiseño Band of Indians
36. Rosebud Sioux Tribe
37. Round Valley Indian Tribes
38. Salt River Pima-Maricopa Indian Community
39. Santee Sioux Tribe of Nebraska
40. Sault Ste. Marie Tribe
41. Shoshone-Bannock Tribes of the Fort Hall Reservation
42. Soboba Band of Luiseno Indians
43. Spirit Lake Dakotah Nation
44. Spokane Tribe of Indians
45. Standing Rock Sioux Tribe
46. Stillaguamish Tribe of Indians
47. Summit Lake Paiute Tribe
48. Swinomish Indian Tribal Community
49. Te-Moak Tribe of Western Shoshone Indians
50. Tohono O'odham Nation
51. Tulalip Tribes
52. Tule River Indian Tribe
53. Ute Indian Tribe of the Uintah and Ouray Reservation
54. Ute Mountain Ute Tribe
55. Winnebago Tribe of Nebraska
56. Qawalangin Tribe of Unalaska
57. Tlingit & Haida Tribes of Alaska
58. Northwestern Band of Shoshone Indians
59. Hoopa Valley Tribe
60. Ak-Chin Indian Community
61. Oglala Sioux Tribe
62. Yoruk Tribe
63. Cheyenne River Sioux Tribe
64. Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony

65. Seminole Nation of Oklahoma
66. Otoe-Missouria Tribe of Oklahoma
67. Samish Indian Nation
68. Tonkawa Tribe of Indians of Oklahoma
69. Yakama Nation
70. Miami Tribe of Oklahoma
71. Shoshone Indian Tribe of the Wind River Reservation
72. Pueblo of Laguna

# 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 sub-

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

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

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

## Abbreviations

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

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

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

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

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2013–27 through 2013–52 is in Internal Revenue Bulletin 2013–52, dated December 23, 2013.

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<sup>1</sup>A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2013–27 through 2013–52 is in Internal Revenue Bulletin 2013–52, dated December 23, 2013.

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### 2013–27

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### 2013–28

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### 2013–32

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#### Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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