

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.

SPECIAL ANNOUNCEMENT

Announcement 96-33, page 12.

A public hearing will be held on June 5, 1996, on proposed regulations which clarify certain requirements for tax-exempt section 501(c)(5) organizations.

GIFT TAX

PS-4-96, page 5.

Proposed regulations under section 2702 of the Code permit the reformation of a personal residence trust or a qualified personal residence trust to comply with the applicable requirements for such trusts. A public hearing will be held on July 24, 1996.

ADMINISTRATIVE

Notice 96-26, page 4.

LR-115-86, 1988-2 C.B. 834, relating to tax on the sale or removal of gasoline, and LR-77-88, 1988-2 C.B. 834, relating to gasoline excise tax bond requirements, are withdrawn.

Notice 96-27, page 4.

T.D. 8595, 1995-1 C.B. 205, relating to payments of Internal Revenue taxes and stamps by check or money order, is corrected.

Announcement 96-23, page 7.

This announcement proposes procedures for a foreign person to apply to the IRS to be a qualified intermediary under section 1.1441-1(e)(5) of the proposed regulations under section 1441.

Announcement 96-34, page 13.

T.D. 8653, 1996-12 I.R.B. 4, relating to the character and timing of gain or loss from hedging transactions entered into by member of a consolidated group, is corrected.

Announcement 96-35, page 13.

T.D. 8638, 1996-5 I.R.B. 5, relating to certain transfers of stock or securities of domestic corporations by U.S. persons to foreign corporations, is corrected.

Announcement 96-36, page 13.

T.D. 8648, 1996-10 I.R.B. 23, relating to a controlling corporation's basis adjustment in its controlled corporation's stock following a triangular reorganization, is corrected.

Announcement 96-37, page 14.

T.D. 8597, 1995-32 I.R.B. 6, relating to intercompany transaction system of the consolidated return regulations, is corrected.

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the

quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

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 of a permanent nature are consolidated 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 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.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

The Bulletin Index-Digest System, a research and reference service supplementing the Bulletin, may be obtained from the Superintendent of Documents on a subscription basis. It consists of four Services: Service No. 1, Income Tax; Service No. 2, Estate and Gift Taxes; Service No. 3, Employment Taxes; Service No. 4, Excise Taxes. Each Service consists of a basic volume and a cumulative supplement that provides (1) finding lists of items published in the Bulletin, (2) digests of revenue rulings, revenue procedures, and other published items, and (3) indexes of Public Laws, Treasury Decisions, and Tax Conventions.

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

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

Part III. Administrative, Procedural, and Miscellaneous

Gasoline

Notice 96-26

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notices of proposed rulemaking.

SUMMARY: This document withdraws the notices of proposed rulemaking relating to gasoline that were published in the Federal Register on November 18, 1987, and September 27, 1988, because of amendments to sections 4081 and 4101 of the Internal Revenue Code made by the Omnibus Budget Reconciliation Act of 1990 and the Omnibus Budget Reconciliation Act of 1993.

FOR FURTHER INFORMATION CONTACT: Frank Boland, (202) 622-3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1987, the IRS issued proposed regulations (LR-115-86 [1988-2 C.B. 834]) relating to tax on the sale or removal of gasoline (52 FR 44141) which were later proposed to be amended on September 27, 1988 (53 FR 37590). On September 27, 1988, the IRS issued proposed regulations (LR-77-88 [1988-2 C.B. 834]) relating to gasoline excise tax bond requirements (53 FR 37590). The Omnibus Budget Reconciliation Act of 1990 and the Omnibus Budget Reconciliation Act of 1993 amended sections 4081 and 4101. On July 22, 1992, final regulations (TD 8421 [1992-2 C.B.

260]) relating to gasoline tax under section 4081 as amended were published in the Federal Register (57 FR 32424). On November 30, 1993, temporary regulations (TD 8496 [1993-2 C.B. 281]) relating to registration requirements under section 4101 as amended were published in the Federal Register (58 FR 63069). Therefore, the earlier proposed rules are withdrawn.

* * * * *

Withdrawal of Notices of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notices of proposed rulemaking that were published in the Federal Register on November 18, 1987 (52 FR 44141) and September 27, 1988 (53 FR 37590) are withdrawn.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on March 13, 1996, 8:45 a.m., and published in the issue of the Federal Register for March 14, 1996, 61 F.R. 10492)

Payment of Internal Revenue Tax by Check or Money Order and Liability of Financial Institutions for Unpaid Taxes; Correction

Notice 96-27

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations [TD 8595 [1995-1 C.B. 205]] which were

published in the Federal Register for Friday, April 28, 1995 (60 FR 20899). The final regulations relate to payments with respect to internal revenue taxes and internal revenue stamps by check or money order.

EFFECTIVE DATE: April 28, 1995.

FOR FURTHER INFORMATION CONTACT: Robert A. Walker, (202) 622-3640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 6311 of the Internal Revenue Code.

Need for Correction

As published, TD 8595 contains an error that is in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations which is the subject of FR Doc. 95-10410, is corrected as follows:

On page 20899, column 3, in amendatory instruction "Par. 2.," line 8, the amendatory language "5. Adding paragraphs (d) and (e)." is corrected to read "5. Adding paragraph (d)."

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 27, 1996, 8:45 a.m., and published in the issue of the Federal Register for March 28, 1996, 61 F.R. 13762)

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Sale of Residence from Qualified Personal Residence Trust

PS-4-96

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains a proposed regulation permitting the reformation of a personal residence trust or a qualified personal residence trust in order to comply with the applicable requirements for such trusts. The proposed regulation also clarifies that the governing instruments of such trusts must prohibit the sale of a residence held in the trust to the grantor of the trust, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse. The proposed regulation will affect trusts created after the proposed effective date.

DATES: Written comments and outlines of oral comments to be presented at the public hearing scheduled for July 24, 1996, must be received by July 15, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (PS-4-96), Room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (PS-4-96), Courier's Desk Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. The public hearing will be held in the IRS auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Dale Carlton, (202) 622-3090; concerning submissions and the hearing, Evangelista Lee, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: *Paperwork Reduction Act*

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by June 15, 1996.

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

The collection of information is in §25.2702-5. This information is required by the IRS to ensure compliance with the regulatory requirements. The likely respondents are individuals or households. Responses to the collection of information are required to obtain favorable gift tax treatment.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Estimated total annual reporting/recordkeeping burden: 625 hours.

The estimated annual burden per respondent varies from 3 hours to 3.25 hours depending on individual circumstances with an estimated average of 3.1 hours.

Estimated number of respondents: 200

Estimated annual frequency of responses: 2

Background

This document proposes to amend the Gift Tax Regulations (26 CFR

part 25) under section 2702 relating to "personal residence trusts" and "qualified personal residence trusts."

Section 2702(a) provides special valuation rules for determining the value of a gift when a transfer is made in trust to or for the benefit of a member of the donor's family and the donor retains an interest in the trust. Under section 2702(a)(2)(A), the value of any retained interest that is not a "qualified interest" is treated as zero. Therefore, the value of the gift is equal to the full value of the property at the time of the transfer. In contrast, the value of a retained interest that is a qualified interest is determined under the valuation tables prescribed pursuant to section 7520. Section 2702(b) provides that a qualified interest means an annuity interest, a unitrust interest, or a remainder interest after either an annuity or unitrust interest.

Congress recognized that many people desire to maintain the family ownership of their home and pass ownership on to future generations, while retaining its use for a period of time. The annuity and unitrust requirements are not, however, conducive to the transfer of a residence. Accordingly, section 2702(a)(3)(A)(ii) provides an exception to the annuity and unitrust requirements. Under this limited exception, the grantor's retained interest need not be in one of these forms, but rather can take the form of a right to the use and occupancy of the residence. Because this is an exception to the general rule of section 2702, a grantor may take into account not only the value of the retained interest, but also any contingent reversionary interest, in determining the amount of the gift to the remainderman.

The requirements of section 2702(a)(3)(A)(ii) are satisfied by a personal residence trust and a qualified personal residence trust as set forth in the regulations. The governing instruments of these trusts must prohibit the trust from holding, for the original duration of the term interest, assets other than one residence to be used or held for the use as a personal residence of the term holder. In addition, a qualified personal residence trust can hold limited amounts of cash for certain specified purposes such as the payment of operating expenses and expenses for the improvement or replacement of the

residence, and the trustee is permitted to sell the residence during the original duration of the term interest, if certain requirements are satisfied.

If the trust does not qualify as a personal residence trust or a qualified personal residence trust, the grantor's retained interest is valued at zero under section 2702. This is the result even where the lack of compliance with the requirements in the regulations is the result of error or poor advice. As most errors are discovered at the time the gift tax return is prepared, the proposed regulation permits reformation of the trust to be commenced up to 90 days after the gift tax return is due. A properly reformed trust will be treated as satisfying the regulatory requirements.

Questions have arisen as to whether it is permissible for the grantor to place a personal residence in trust, obtain all the tax benefits of a qualified personal residence trust and then purchase the residence from the trust. For example, in a transaction described by one commentator as the "bait and switch," the grantor places the residence in trust with the intention of purchasing the residence from the trust just prior to the expiration of the grantor's retained term so that cash or other assets pass to the remaindermen in place of the residence.

The Treasury Department and the IRS have previously stated the view that Congress intended the personal residence trust exception to enable transferors to pass the family home to younger members of the family. Preamble to TD 8395, 1992-1 C.B. 316, at 319. Using the "bait and switch" technique, however, the personal residence trust exception could be used to facilitate the transfer of the grantor's other assets to future generations. The residence would merely serve as a temporary "stand-in" to avoid the annuity and unitrust requirements of section 2702. The proposed regulations clarify that the sale of the residence to the grantor by the trustee of the personal residence trust or qualified personal residence trust is not consistent with Congress' intent in enacting section 2702.

Explanation of Provisions

The proposed regulation provides that a trust that does not comply with one or more of the regulatory re-

quirements for qualification as a personal residence trust or a qualified personal residence trust, will be treated as satisfying those requirements if the trust is reformed by judicial reformation (or nonjudicial reformation if effective under state law) to comply with the requirements. The reformation must be commenced within 90 days of the due date (including extensions) for filing the gift tax return reporting the transfer of the residence, and must be completed within a reasonable time after commencement. If the reformation is not completed by the due date (including extensions) for filing the gift tax return, the grantor or grantor's spouse must attach a statement to the gift tax return stating that the reformation has been commenced, or will be commenced within the 90-day period.

The proposed regulation also requires that, in order to qualify as a personal residence trust or a qualified personal residence trust, the trust's governing instrument must prohibit the trust from selling or transferring the residence, directly or indirectly, to the grantor, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse. A sale or transfer to another grantor trust of the grantor or the grantor's spouse is considered a sale or transfer to the grantor or the grantor's spouse. For these purposes, the term *grantor trust* is a trust treated as owned by the grantor or the grantor's spouse within the meaning of sections 671-677. The term *control* is defined in §25.2701-2(b)(5)(ii) and (iii).

Proposed Effective Date

The amendments to §§25.2702-5(b) and (c) are proposed to be effective for trusts created after May 16, 1996. Thus, a trust created after this date will not satisfy the requirements of a personal residence trust or a qualified personal residence trust if the trust document does not comply with the regulations, as amended. Such a trust would be eligible for reformation under the proposed regulation.

Notwithstanding the proposed effective date, if the IRS examines a pre-effective date trust and finds it inconsistent with the purposes of section 2702 or the regulations thereunder, the IRS, by using established legal doctrines such as the substance over form doctrine, may treat the trust as not

qualifying under section 2702. Thus, for example, if the grantor actually purchases the residence from the trust pursuant to a right or option to purchase that is stated in the trust instrument or a collateral document, the IRS may not treat the trust as a qualified personal residence trust.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing has been scheduled for July 24, 1996, at 10 a.m. in the auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by July 15, 1996 and an outline of the topics to be discussed and the time to be devoted to each topic. A period of 10 minutes will be allotted each person for making comments.

An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this regulation is Dale Carlton, Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 25 is proposed to be amended as follows:

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Paragraph 1. The authority citation for part 25 continues to read in part as follows:

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

Par. 2. Section 25.2702-5 is amended as follows:

1. Paragraph (a) is redesignated as paragraph (a)(1) and paragraph (a)(2) is added.

2. In paragraph (b)(1), four new sentences are added after the third sentence.

3. Paragraph (c)(5)(ii)(C) is revised.

4. Paragraph (c)(9) is added.

The additions and revisions read as follows:

§25.2702-5. Personal residence trusts.

(a)(1) *In general.* * * *

(2) *Modification of trust.* A trust that does not comply with one or more of the regulatory requirements under paragraph (b) or (c) of this section will, nonetheless, be treated as satisfying these requirements if the trust is modified, by judicial reformation (or nonjudicial reformation if effective under state law), to comply with the requirements. The reformation must be commenced within 90 days after the due date (including extensions) for the filing of the gift tax return reporting the transfer of the residence under section 6075 and must be completed within a reasonable time after commencement. If the reformation is not completed by the due date (including extensions) for filing the gift tax return,

the grantor or grantor's spouse must attach a statement to the gift tax return stating that the reformation has been commenced or will be commenced within the 90-day period.

(b) * * * (1) * * * In addition, the trust does not meet the requirements of this section unless the governing instrument prohibits the trust from selling or transferring the residence, directly or indirectly, to the grantor, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse, at any time after the original term interest during which the trust is a grantor trust. For purposes of the preceding sentence, a sale or transfer to another grantor trust of the grantor or the grantor's spouse is considered a sale or transfer to the grantor or the grantor's spouse. For purposes of this section, a *grantor trust* is a trust treated as owned by the grantor or the grantor's spouse within the meaning of sections 671-677. The term *control* is defined in §25.2701-2(b)(5)(ii) and (iii). * * *

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(C) *Sale proceeds.* The governing instrument may permit the sale of the residence (except as set forth in paragraph (c)(9) of this section) and may permit the trust to hold proceeds from the sale of the residence, in a separate account.

* * * * *

(9) *Sale of residence to grantor, grantor's spouse, or entity controlled by grantor or grantor's spouse.* The governing instrument must prohibit the trust from selling or transferring the residence, directly or indirectly, to the grantor, the grantor's spouse, or an entity controlled by the grantor or the grantor's spouse during the original term interest of the trust, or at any time after the original term interest that the trust is a grantor trust. For purposes of the preceding sentence, a sale or transfer to another grantor trust of the grantor or the grantor's spouse is considered a sale or transfer to the grantor or the grantor's spouse. For purposes of this section, a *grantor trust* is a trust treated as owned by the grantor or the grantor's spouse within the meaning of sections 671-677. The

term *control* is defined in §25.2701-2(b)(5)(ii) and (iii).

* * * * *

Par. 3. Section 25.2702-7 is amended as follows:

1. The first sentence of this section is revised; and

2. A new sentence is added at the end of the section, to read as follows:

§25.2702-7 Effective dates.

Except as provided in this section, §§25.2702-1 through 25.2702-6 are effective as of January 28, 1992. * * * The fourth through seventh sentences of §25.2702-5(b)(1) and §25.2702-5(c)(9) are effective with respect to trusts created after May 16, 1996.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on April 15, 1996, 8:45 a.m., and published in the issue of the Federal Register for April 16, 1996, 61 F.R. 16623)

Announcement 96-23

The following text of a revenue procedure is proposed in conjunction with the publication of proposed regulations under chapter 3 of the Code and related Code provisions, relating to the withholding and reporting of certain income paid to foreign persons. This announcement proposes procedures for a foreign person to apply to the Internal Revenue Service for an agreement in order for that foreign person to be a qualified intermediary under § 1.1441-1(e)(5) of the proposed regulations under section 1441. Comments regarding this announcement should be submitted in the same manner and within the same time period as are prescribed for comments submitted under the proposed regulations under chapter 3 of the Code.

Rev. Proc. #

SECTION 1. PURPOSE

This revenue procedure provides guidance to persons that consider entering into a withholding agreement with the Internal Revenue Service ("Service") in order to be treated as a Qualified Intermediary ("QI") for pur-

poses of section 1.1441-1 (e)(5) of the Income Tax Regulations. The withholding agreements described in this revenue procedure are relevant to payments of interest, dividends, and gross proceeds on portfolio investments held through one or more intermediaries. This revenue procedure describes the application procedures for a withholding agreement and the terms that the Service will ordinarily require to be incorporated into the agreement.

SEC. 2. BACKGROUND

.01 *Withholding and reporting on payments to foreign persons.* Payors of certain types of income, which include dividends, interest, and gross proceeds described in sections 6042, 6049, and 6045, respectively, are generally required to determine whether the payee or beneficial owner is a U.S. or a foreign person for several purposes under the Internal Revenue Code (the “Code”). Under sections 1441(a) and 1442(a) of the Code, payments of U.S. source interest and dividends (but not gross proceeds from portfolio investments) are subject to a 30 percent tax withheld at source by the withholding agent if the income is paid to a non-resident alien or a foreign corporation. A foreign beneficial owner may benefit from an exemption or reduced rate under the Code, the regulations, or an income tax treaty. Under section 3406 of the Code, a payor of dividends, interest, and gross proceeds must obtain a Form W-9 from the payee or backup withhold at a 31 percent rate unless an exception applies or the payee furnishes a certificate of foreign status on Form W-8.

.02 *Proof of payee’s or beneficial owner’s status.* The regulations under section 1441, 6042, 6049, and 6045 prescribe the manner in which a beneficial owner or payee may, with respect to these types of payments, certify to a withholding agent or payor that it is a foreign person and, if applicable, that a reduced rate of withholding at source should apply. For this purpose, a withholding agent may generally rely on a certificate of foreign status (Form W-8) or documentary evidence (see procedures described in §1.1441-1(e)(2)(ii) and §1.6049-5(c)(1) and (2)). Alternative certification procedures may be used in the case of payments made outside the United States with respect to an offshore account.

03. *Certification through nominees or agents—intermediary withholding certificate.* A QI may provide an intermediary withholding certificate on behalf of its account holders or partners, including intermediaries or other QI’s. See §1.1441-1(e)(5).

SEC. 3. APPLICATION FOR WITHHOLDING AGREEMENT

01. *Eligible person and eligible financial institution.* An eligible person is a person described in §1.1441-1(e)(5)(ii) that may apply for a withholding agreement under this revenue procedure. An eligible financial institution is an eligible person described in §1.1441-1(e)(5)(ii)(A) (a clearing organization defined in section 1.163-5(c)(2)(i)(D)(8) or a financial institution defined in §1.165-12(c)(1)(iv)).

02. *Pre-application conference.* An eligible person interested in a withholding agreement under this revenue procedure may request one or more pre-application conferences with the Assistant Commissioner (International), Foreign Payments Division, to explore informally the benefits and burdens associated with such an agreement. The conference provides an opportunity to address such matters as the scope of the agreement, available alternatives, special issues regarding the institution’s ability to comply with the terms of the agreement, the legal status of the agreement under local law, and the nature of documentation, record-keeping, reporting, verification, withholding and remittances of tax that may be required under the agreement.

03. *Where to Apply.* An eligible person may apply for a withholding agreement by submitting a written request to the Assistant Commissioner (International), Foreign Payments Division CP:IN:I:WT, 950 L’Enfant Plaza, Washington D.C. 20024.

04. *Content of Application—Eligible Financial Institution.* The application shall indicate that the applicant is an eligible financial institution and that it requests a withholding agreement with the Service pursuant to this revenue procedure. In the case of an eligible financial institution, the application shall include the information described in this section 3.04(i) through (viii). Upon review of the application, the Service may request additional information and documentation.

(i) The applicant’s name, address, and employer identification number. If

the applicant does not have an employer identification number, a completed Form SS-4 must be included to obtain such number.

(ii) A description of the applicant including the country under whose laws the applicant is created or organized and status of the applicant (corporation, partnership, trust, pool, etc.) under such country’s laws.

(iii) A list of the applicant’s officers and directors, and a list of the employees who are responsible parties for performance under the agreement.

(iv) An explanation of the branches, if any, intended to be covered by the agreement and a description of their location.

(v) An explanation of the applicant’s “know-your-customer” practices and procedures for opening accounts, identifying customers, and communication with customers, and the extent to which they are mandated and verified under local law and regulations applicable at each location intended to be covered by the agreement, and the penalties or sanctions that may apply under local law in the event of a failure to comply with such procedures. Supporting documentation must be included.

(vi) An explanation of the account agreements and other account documents used by the applicant in its account relationships with its customers (or partners) at each location intended to be covered by the agreement.

(vii) Information regarding the number of account holders (or partners) likely to be covered by an intermediary certificate and the aggregate value of estimated U.S. investments associated with the account holders (or partners).

(viii) Information regarding governmental or other supervision to which the applicant is subject at each location intended to be covered by the agreement.

.05 *Content of Application—Eligible Persons Other than Financial Institutions.* The application shall indicate that the applicant is an eligible person, other than an eligible financial institution, and that it requests a withholding agreement with the Service pursuant to this revenue procedure. In the case of an applicant other than an eligible financial institution, the application shall include the information described in this section 3.05 (i) through (viii). Upon review of the application, the Service may request additional information and documentation.

(i) The applicant's name, address, and employer identification number. If the applicant does not have an employer identification number, a completed Form SS-4 must be included to obtain such number.

(ii) The reason that the applicant wishes to conclude a withholding agreement.

(iii) A description of the applicant including the country under whose laws the applicant is created or organized and status of the applicant (corporation, partnership, trust, pool, etc.) under such country's laws.

(iv) A list of the applicant's officers and directors, and a list of the employees who are responsible parties for performance under the agreement.

(v) An explanation of the branches, if any, intended to be covered by the agreement and a description of their location.

(vi) Information regarding the number of account holders (or partners) likely to be covered by an intermediary certificate and the aggregate value of estimated U.S. investments associated with the account holders (or partners).

(vii) An explanation of the applicant's "know-your-customer" practices and procedures, if any, and the extent to which they are mandated and verified under local law and regulations applicable at each location intended to be covered by the agreement, and the penalties or sanctions that may apply under local law in the event of a failure to comply with such procedures. Supporting documentation must be included.

(viii) Information regarding governmental or other supervision to which the applicant is subject at each location intended to be covered by the agreement.

SEC. 4. WITHHOLDING AGREEMENT

01. *In general.* The withholding agreement described under §1.1441-1(e)(5)(iii) is an agreement between the Service and an eligible person pursuant to this revenue procedure, by which the Service agrees to consider the entity as a QI in consideration for the entity's agreement to undertake specified responsibilities. These responsibilities are assumed under the authority of chapter 3, chapter 61, and section 3406 of the Code. The purpose of a withholding

agreement is to specify the extent to which, and the manner in which, the responsibilities imposed under these statutory provisions (and the regulations under these provisions) shall apply to a QI. The agreement will generally include procedures designed to document the identity of beneficial owners, maintain records, and report information to the Service. Withholding agreements will also address procedures to insure compliance with the terms of the agreement. The terms of a withholding agreement may vary from case to case depending upon such factors as local laws and practices dealing with bank secrecy, know-your-customer procedures, supervisory controls, tax reporting requirements, information exchange under an income tax treaty, the financial stature of the applicant, and the types of internal controls and record keeping procedures which the entity has in effect.

02. *Procedures regarding intermediary withholding certificate.*

(a) *In general.* The withholding agreement will specify that a QI may furnish an intermediary certificate with respect to interest, dividends and broker proceeds for which a Form W-8 or Form W-9 would otherwise be required to be furnished to the U.S. withholding agent or payor under section 1441, 1442, 3406, 6042, 6045, or 6049.

(b) *Tiered intermediary certificates.* Under the agreement, a QI may agree to accept an intermediary certificate from another QI and base its own certification on the intermediary certificate received from another QI. For example, where a U.S. withholding agent makes a payment to QI1, that, in turn, makes a payment to QI2, the agent may rely upon the intermediary certificate furnished by QI1; QI1 may rely on the intermediary certificate that QI2 furnishes to QI1. QI2's certificate is not required to be furnished to the withholding agent.

(c) *Designation of primary withholding responsibilities.* A QI is a withholding agent for purposes of chapter 3 of the Code and a payor for purposes of section 3406 and chapter 61 of the Code. Therefore, in order to clarify whether the U.S. withholding agent or the QI must actually withhold any amount of tax due, the withholding agreement must provide whether the QI will undertake primary responsibility with respect to the withholding of tax on payments to beneficial owners or

U.S. payees. The QI may agree to assume primary withholding responsibility only in part. For example, the QI may be willing to assume information reporting and backup withholding responsibilities for its U.S. customers and thus would assume primary withholding responsibility, but not agree to assume primary withholding responsibility on payments to its foreign customers.

(i) *Applicable procedures if QI assumes primary withholding responsibility.* A QI that assumes primary withholding responsibility under a withholding agreement must satisfy the requirements described in this section (i) in connection with the relevant payments. For purposes of determining its withholding and reporting responsibilities, a QI may rely upon the presumptions of a payee's status described in §1.1441-1(f).

(A) Provide to the withholding agent or other QI an intermediary withholding certificate indicating the extent to which the QI assumes primary withholding responsibility.

(B) Withhold the amount of tax required under sections 1441, 1442, or 3406, except to the extent of payments made to another QI that has provided an intermediary withholding certificate indicating that it has assumed primary withholding responsibility.

(C) Deposit tax and make returns under the Code and the regulations pertaining to payments made by the QI, except as may be otherwise specified in the agreement with the Service.

(ii) *Applicable procedures if QI does not assume primary withholding responsibility.* A QI that does not assume primary withholding responsibility under the agreement must satisfy the requirements described in this section (ii) in connection with the relevant payments.

(A) Provide to a withholding agent or other QI an intermediary certificate indicating that the QI does not assume primary withholding responsibility.

(B) Identify the relevant classes of assets covered by the intermediary withholding certificate (including the class of assets covered by another intermediary certificate for which the issuing QI agrees to assume primary withholding responsibility).

(C) Certify the status of each class (*i.e.* whether the assets are held by U.S. or foreign persons) and the applicable rate of withholding tax.

(D) Provide to the withholding agent or other QI W-9s for U.S. owners that are not exempt recipients and names and addresses of U.S. owners that are exempt recipients.

(iii) *Definition of class of asset.* A class of assets is any group of assets that produces the same type of income (e.g. interest or dividends), that is subject to withholding at the same rate, that is held either by foreign persons or the same U.S. person, and for which the QI giving the intermediary certificate has not assumed primary withholding responsibility. For example, an eligible financial institution has foreign customers residing in two treaty countries (the rate of tax permitted on dividend income is 15% under both treaties) and U.S. customers. All customers earn U.S. source dividend and portfolio interest. The institution, if a QI that did not assume primary withholding responsibility for all of its payments, would furnish one intermediary certificate identifying the different classes of assets: assets producing portfolio interest earned by foreign customers claiming the portfolio interest exemption at source; assets producing dividend income earned by foreign customers claiming the 15% reduced rate at source; assets producing interest income earned by each U.S. customer; and assets producing dividends earned by each U.S. customer. Assets may be identified by account. That is, the QI's intermediary certificate may indicate that all assets held in a particular account represent assets that produce portfolio interest for foreign persons. Any beneficial owner or payee for whom the QI does not hold all of the required documentation as specified under the withholding agreement must be identified as a separate class and treated, under the presumptions described in §1.1441-1(f)(2)(i)(A) as a U.S. payee that is not an exempt recipient.

(iv) *Disclosure of identify of beneficial owner or payee by QI that does not assume primary withholding responsibility.* Generally, an intermediary certificate provided by a QI that does not assume primary withholding responsibility does not disclose the identity of the beneficial owners. The documentation supporting the claim of foreign status and entitlement to treaty benefits need not be attached to the intermediary withholding certificate. However, if the QI does not assume

primary withholding responsibility for payments made to U.S. persons and, therefore, has not agreed to report U.S. source payments made to U.S. persons, the documentation supporting the claims of U.S. status must be attached to the intermediary certificate so that the withholding agent/payor may report or backup withhold with respect to such payments.

03. *Certification and documentation requirements.*

(a) *In general.* The withholding agreement will provide that an account holder is appropriately accounted for in an intermediary withholding certificate only if the QI has obtained the type of certification or documentation for the account holder as the agreement will specify. Generally, for account holders that are beneficial owners, the QI must agree to be subject to the same certification or documentation requirements as apply to withholding agents under section 1441 and the regulations thereunder and to payors under sections 6042, 6045, and 6049 and the regulations thereunder. For this purpose, a withholding agreement will specify the extent to which a QI may rely upon Form W-8 that does not state a taxpayer identification number. The QI may use such substitute form as the Service may approve under the agreement (including certifications incorporated into a form in use by the QI for the opening of new accounts). However, the agreement may provide for other types of acceptable documentation. The ability to use documentation different from that required under regulations will depend upon existing documentation procedures used by the QI to document the identity, nationality, and residence of beneficial owners and the nature of supervisory controls and reporting procedures to which it is subject under local laws. Substitute documentation must approximate the evidentiary value of the documentation required under the regulations.

(b) *Standards of reliability.* The reliability of any documentation will be evaluated on the basis of the type of information stated on the document, the source document, if any, used to substantiate the information on the document, the issuance procedures used, and the ease with which it can be counterfeited. Copies of documents will generally be acceptable if the QI certifies that the documents are correct copies of the original documents.

(c) *Account holders that are nominees.* If an account holder is not acting for its own account (e.g., is a nominee or agent for the beneficial owner) and is not a QI, the QI must obtain certification or documentation regarding the beneficial owner in the manner specified in the agreement. It must then either transmit such certification or documentation to the next intermediary in the chain or include the beneficial owner in its intermediary certificate. In the latter situation, the QI is responsible for the correctness and completeness of the certification or documentation relied upon in the same manner and to the same extent as if the beneficial owner were a direct account holder with the QI.

04. *Certification with respect to claim of tax treaty benefits.* A QI may also agree to certify the residence of an account holder for purposes of claiming benefits under an income tax treaty. If the account holder does not have a TIN, the QI may either accept a certificate of tax residence from the appropriate tax authority in the country with which the United States has an income tax treaty or agree to maintain appropriate documentary evidence regarding residence of the account holder in the treaty country.

05. *Acceptance agents.* Under a withholding agreement, the QI may agree to act as an acceptance agent for purposes of section 6109 of the Code and the regulations thereunder. [See Rev. Proc. xx-xx for the duties and obligations of an acceptance agent.]

(a) *Assistance with obtaining a taxpayer identification number.* A QI that acts as an acceptance agent with respect to obtaining identification numbers from the Service for its account holders shall agree to provide a TIN application form to the account holder (i.e., a Form W-7, Application for IRS Individual Taxpayer Identification Number, or a Form SS-4, Application for Employer Identification Number) and to assist in the preparation and submission of the TIN application forms to the Service. The QI may use such substitute form as the Service may approve under the agreement (including the terms of forms SS-4 and W-7 into a form in use by the QI for the opening of new accounts). The forms or substitute form, together with required documentation, may be forwarded to the Service by the QI. The QI may act as agent for the applicant regarding any

additional correspondence necessary in connection with the application. The Service will release the TIN to the QI on behalf of the applicant and the QI will acknowledge receipt on behalf of the applicant.

(b) *Certification on behalf of the applicant.* A QI that is an acceptance agent may, instead of forwarding the required documentation to the Service, certify that it has reviewed the required documentation and that it complies with the Service requirements. In such a case, only the TIN application form (or a substitute form) must be submitted to the Service. Further, in appropriate cases, the QI may execute the TIN application form on behalf of the applicant.

(c) *Certification of residence in a treaty country.* In the case of an applicant claiming residence in a country with which the United States has an income tax treaty, the application and subsequent issuance of a TIN will serve as certification of residence in that country pursuant to §1.1441-6(c)-(2)(iii). If the TIN is issued on the basis of a QI's certification, the QI will agree to notify the Service when the account holder's address changes to another country (based on information obtained by the QI in the ordinary course of business or as otherwise specified under the agreement) and when the account holder terminates its relationship with the QI.

06. *Record-keeping obligations.* The QI will agree that, for purposes of determining its compliance with the withholding agreement, it will maintain a record of the documentation obtained and reviewed pursuant to the documentation obligations set forth in the agreement. The documentation with respect to any account holder shall be maintained for as long as the account holder maintains an account relationship with the QI to which the agreement applies and for a period of no less than 3 years from the date such account relationship ceases or for such other reasonable period as the Service will prescribe in the agreement.

07. *Reporting obligations.* Generally, a QI that assumes primary withholding responsibility for payments relating to a class of assets will be required to make returns and provide information to the Service and beneficial owners or payees as is required under the Code and regulations on an annual basis with respect to payments on such class of

assets. However, in the case of a QI that is an eligible financial institution, these requirements may be modified under the withholding agreement. The withholding agreement may modify or waive the obligation to report beneficial owner information to the Service if access to this information is otherwise available to the Service under other procedures. For example, the obligation to report to the Service may be waived to the extent the QI otherwise reports the similar information to its own tax authorities and such information is accessible to the Service under the exchange of information provisions of an applicable income tax treaty. Similarly, certain reports may be unnecessary where the QI agrees to verification procedures as described in section 4.08, below. The withholding agreement may modify or waive the obligation to furnish a statement to a beneficial owner. The beneficial owner must, however, be able to obtain such a statement on request. A QI that assumes primary withholding responsibility for payments made to a U.S. payee shall agree to report on Form 1099 on U.S. source amounts paid to a U.S. payee.

08. *Verification procedures.*

(i) *In general.* The withholding agreement may specify the records and account information which the QI agrees to make available to the Service for inspection and the procedures for carrying out such inspection. In all cases, the Service must be able to verify that the QI has adequate procedures in effect to identify its account holders (or partners) and determine their nationality and country of residence. In addition, the Service may require procedures enabling it to verify compliance by the QI with the agreement with respect to specific accounts.

(ii) *Special procedures for eligible financial institutions.* (A) *Approved external auditors.* In appropriate cases, the Service may rely on audits of an eligible financial institution performed by the institution's approved external auditors. If, for example, under an income tax treaty or local laws, the Service would be given access to appropriate auditor's records to verify compliance, the Service may audit such records in lieu of auditing the institution's records. For this purpose, records may include workpapers, reports prepared by, and the methodology employed by, the approved external

auditors. In order for such an arrangement to be approved by the Service, an auditor must be subject to regulatory supervision under the laws of the country in which a significant part of the intermediary activities under the agreement are expected to occur, its internal procedures must require it to verify that the financial institution complies with the terms of the withholding agreement and to report non-compliance findings under the agreement in the same manner as it is required to report other findings of non-compliance with applicable local laws and regulatory requirements, and its the relevant records (*i.e.*, workpapers and reports) must be available to the Service upon request.

(B) *Verification of specific account information for eligible financial institutions.* If an eligible financial institution is not subject to audit under the approved external auditor procedure, then the withholding agreement shall contain procedures for auditing information pertaining to specific accounts. Generally, an eligible financial institution that complies with the filing requirements on Forms 1042 and 1042S (or otherwise makes account holder information available to the Service) may be exempted from normal audit procedures or subject to abbreviated audits. Where a QI has agreed to certify to the Service in connection with a TIN application based upon documentation it has obtained and reviewed, it must also agree to furnish the documentation to the Service upon written request in such manner as the Service and the QI will mutually agree. In order to conduct periodic compliance checks, the Service may rely on sampling techniques to assure reliability of the examination while ensuring the least amount of disruption to the financial institution. The withholding agreement will specify the manner in which Service compliance checks will take place. In appropriate cases, assistance may be obtained from the tax authorities of the country where the QI resides.

09. *Guarantee of payment.* The QI must, if required by the Service, obtain a letter of credit, bond, or other surety in such amount as the QI and the Service may agree upon, in order to secure any withholding liability of the QI. The amount of the bond or letter of credit must approximate the risk of underwithholding. Factors to be consid-

ered in this regard include the amount of U.S. investments made through the QI, the number of beneficial owners making U.S. investments, the type of investment and the characteristics of the beneficial owners, and the degree of reporting by the QI to the Service.

10. *Approval and Execution.* A withholding agreement shall be signed by the authorized representative of the eligible person and the Service. The Assistant Commissioner (International) shall sign on behalf of the Service upon approval by the Associate Chief Counsel (International).

11. *Expiration, Termination and Default.*

(a) *Term and events of termination.* Ordinarily, the period of the withholding agreement shall be six years, and the agreement may be renewed for further six year periods as specified in section 12. The withholding agreement may otherwise terminate earlier, *i.e.*, 30 days after delivery of notice of termination by the QI to the Service. The Service may also terminate the agreement prior to its term, *i.e.*, 30 days after delivery to the QI of a notice of termination. The Service cannot give notice of termination until thirty days after it has delivered a notice of default. The Service may deliver a notice of default at any time after an event of default under the withholding agreement has occurred.

(b) *Events of default.* Events of default include the determination upon audit by the Service that significant underwithholding has occurred, that incorrect reporting or a failure to report with respect to a significant number of accounts has occurred, that the QI has failed to comply with the procedures required by the agreement and the failure raises a significant risk that significant underwithholding or underreporting may have occurred. The withholding agreement will define when underwithholding or underreporting is deemed to be significant. An event of default shall also be deemed to occur if the QI has failed to perform any other duty or obligation required of it under the withholding agreement, the QI has misrepresented information on an intermediary withholding certificate, or the QI had actual knowledge at the time a payment was made that information (otherwise required to be provided on withholding certificates described in §1.1441-1(e)(1), as may be modified under the agreement) regarding the

beneficial owner or the payee was lacking, incorrect, or unreliable. The QI may respond to the notice of default by making an offer to cure within thirty days. The Service shall accept or reject the offer to cure, or make a counter-proposal within ten days.

12. *Renewal.* A QI that wishes to renew a withholding agreement must submit an application for renewal to the Service at least six months prior to the expiration of the withholding agreement. The application for renewal shall contain the same information required in the application and shall note any changes that have occurred in the information since the previous application. Before approval of any renewal of the withholding agreement, the Service may conduct an audit of the QI by correspondence making use of statistical sampling techniques or on the basis of spot checking.

SEC. 5. LISTING OF QI's

The Service may periodically publish in the Internal Revenue Bulletin a list of the QI's that have a withholding agreement in effect with the Service and of those whose withholding agreement has been terminated or suspended.

SEC. 6. EFFECTIVE DATE

This revenue procedure is effective on the date of its publication in the Internal Revenue Bulletin.

DRAFTING INFORMATION

The principal author of this revenue procedure is Carl Cooper of the Office of the Associate Chief Counsel (International). For further information regarding this revenue procedure, please contact either Carl Cooper on (202) 622-3840 or John Manton of the Foreign Payments Division on (202) 874-1800.

Requirements for Tax Exempt Section 501(c)(5) Organizations; Hearing

Announcement 96-33

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document announces a hearing on proposed regulations published on December 21, 1995; which clarify requirements of section 501(c)(5) to provide needed guidance to organizations as to the requirements an organization must meet in order to be exempt from tax.

DATES: The public hearing will be held on Wednesday, June 5, 1996, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, May 15, 1996.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Commissioner's Conference Room, Room 3313, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. 20044. Requests to speak and outlines of oral comments should be mailed to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:R [EE-53-95], Room 5228, Washington, D.C., 20044.

FOR FURTHER INFORMATION CONTACT: Evangelista Lee of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is proposed amendments to the Income Tax Regulations under section 501(c)(5) of the Internal Revenue Code. The proposed regulations appeared in the Federal Register for Thursday, December 21, 1995 (60 FR 66228 [EE-53-95, 1996-5 I.R.B. 23]).

The rules of §601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, May 15, 1996, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral

presentation exclusive of the time consumed by the questions from the panel for the government and answer thereto.

Because of controlled access restrictions, attenders cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on April 4, 1996, 8:45 a.m., and published in the issue of the Federal Register for April 5, 1996, 61 F.R. 15204)

Hedging Transaction by Members of a Consolidated Group; Correction

Announcement 96-34

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction of final regulations.

SUMMARY: This document contains a correction to the final regulations [TD 8653 [1996-12 I.R.B. 4]] which were published in the Federal Register for Monday, January 8, 1996 (61 FR 517). The final regulations relate to the character and timing of gain or loss from certain hedging transactions entered into by members of a consolidated group.

EFFECTIVE DATE: February 7, 1996.

FOR FURTHER INFORMATION CONTACT: Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), (202) 622-3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations which are the subject of this correction are under sections 446 and 1221 of the Internal Revenue Code.

Need for Correction

As published, TD 8653 contains an error that is in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations which is the subject of FR Doc. 96-178, is corrected as follows:

§1.1221-2 [Corrected]

On page 520, column 2, §1.1221-2, paragraph (d)(2)(iv), last line, the language "after the date so indicated." is corrected to read "after the date so indicated. The election may be revoked only with the consent of the Commissioner."

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 20, 1996, 8:45 a.m., and published in the issue of the Federal Register for March 21, 1996, 61 F.R. 11547)

Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations; Correction

Announcement 96-35

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to temporary regulations (TD 8638 [1996-5 I.R.B. 5]), which were published in the Federal Register Tuesday, December 26, 1995 (60 FR 66739), that amend the Income Tax Regulations with respect to certain transfers of stock or securities of domestic corporations by United States persons to foreign corporations pursuant to the corporate organization, reorganization, or liquidation provisions of the Internal Revenue Code. The temporary regulations also remove certain parts of the existing temporary regulations regarding transfers by U.S. persons of stock or securities of both domestic and foreign corporations.

EFFECTIVE DATE: December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Philip L. Tretiak, (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction is under section 367 Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 8638) contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8638), which were the subject of FR Doc. 95-30829, is corrected as follows:

On page 66739, column 2, in the preamble under the paragraph heading "Applicability and Effective Dates", line 9, the language "for transfers occurring January 25, 1996." is corrected to read "for transfers occurring after January 25, 1996."

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 20, 1996, 8:45 a.m., and published in the issue of the Federal Register for March 21, 1996, 61 F.R. 11550)

Controlling Corporation's Basis Adjustment in its Controlled Corporation's Stock Following a Triangular Reorganization; Correction

Announcement 96-36

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations [TD 8648 [1996-10 I.R.B. 23]] which were published in the Federal Register for Thursday, December 21, 1995 (60 FR 66077). The final regulations relate to the rules for adjusting the basis of a

controlling corporation in the stock of a controlled corporation as the result of certain triangular reorganizations involving the stock of the controlling corporation.

EFFECTIVE DATE: December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Curt Cutting, (202) 622-7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under sections 358, 1032, and 1502 of the Internal Revenue Code.

Need for Correction

As published, TD 8648 contains a typographical error that is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations which are the subject of FR Doc. 95-30875, is corrected as follows:

§ 1.358-6 [Corrected]

On page 66080, column 3, § 1.358-6

(c)(4), in paragraph (d) of *Example 2.*, line 9, the language “Under 1.358-6 (c)(2)(i)(A), *P*’s basis in its *T*” is corrected to read “Under § 1.358-6 (c)(2)(i)(A), *P*’s basis in its *T*.”

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 20, 1996, 8:45 a.m., and published in the issue of the Federal Register for March 21, 1996, 61 F.R. 11547)

Consolidated Groups and Controlled Groups—Intercompany Transactions and Related Rules; Correction

Announcement 96-37

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations [TD 8597 [1995-32 I.R.B. 6]] which were published in the Federal Register for Tuesday, July 18, 1995 (60 FR 36671). The final regulations amend the intercompany transaction system of the consolidated return regulations.

EFFECTIVE DATE: July 18, 1995.

FOR FURTHER INFORMATION CONTACT: Roy Hirschhorn of the Office of Assistant Chief Counsel

(Corporate), (202) 622-7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 1502 and 267 of the Internal Revenue Code.

Need for Correction

As published, TD 8597 contains errors that are in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations which is the subject of FR Doc. 95-16973, is corrected as follows:

On page 36679, under amendatory instruction “Par. 2.,” the first column in the table is corrected by removing the reference to “1.263A-1T(b)(2)-(vi)(B)” and in the seven entries for “1.263A-1T” correct the number “1.263A-1T” to read “1.263A-7T.”

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 27, 1996, 8:45 a.m., and published in the issue of the Federal Register for March 28, 1996, 61 F.R. 13762)

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 law 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 the 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 Contribution 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.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List¹

Bulletins 1996–1 through 1996–17

Announcements:

96–1, 1996–2 I.R.B. 57
96–2, 1996–2 I.R.B. 57
96–3, 1996–2 I.R.B. 57
96–4, 1996–3 I.R.B. 50
96–5, 1996–4 I.R.B. 99
96–6, 1996–5 I.R.B. 43
96–7, 1996–5 I.R.B. 44
96–8, 1996–7 I.R.B. 56
96–9, 1996–8 I.R.B. 30
96–10, 1996–8 I.R.B. 30
96–11, 1996–9 I.R.B. 11
96–12, 1996–11 I.R.B. 30
96–13, 1996–12 I.R.B. 33
96–14, 1996–12 I.R.B. 35
96–15, 1996–11 I.R.B. 9
96–16, 1996–13 I.R.B. 22
96–17, 1996–13 I.R.B. 22
96–18, 1996–15 I.R.B. 15
96–19, 1996–15 I.R.B. 15
96–20, 1996–15 I.R.B. 15
96–21, 1996–15 I.R.B. 15
96–22, 1996–15 I.R.B. 16
96–23, 1996–16 I.R.B. 30
96–24, 1996–16 I.R.B. 35
96–25, 1996–17 I.R.B. 13
96–26, 1996–17 I.R.B. 13
96–27, 1996–17 I.R.B. 16
96–28, 1996–17 I.R.B. 16
96–29, 1996–17 I.R.B. 17
96–30, 1996–17 I.R.B. 17
96–31, 1996–17 I.R.B. 18
96–32, 1996–17 I.R.B. 18

Delegations Orders:

232 (Rev. 2), 1996–7 I.R.B. 49
239 (Rev. 1), 1996–7 I.R.B. 49

Notices:

96–2, 1996–2 I.R.B. 15
96–1, 1996–3 I.R.B. 30
96–4, 1996–4 I.R.B. 69
96–5, 1996–6 I.R.B. 22
96–6, 1996–5 I.R.B. 27
96–7, 1996–6 I.R.B. 22
96–8, 1996–6 I.R.B. 23
96–9, 1996–6 I.R.B. 26
96–10, 1996–7 I.R.B. 47
96–11, 1996–8 I.R.B. 19
96–12, 1996–10 I.R.B. 29
96–13, 1996–10 I.R.B. 29
96–14, 1996–12 I.R.B. 11
96–15, 1996–13 I.R.B. 19
96–16, 1996–13 I.R.B. 20

Notices—Continued

96–17, 1996–13 I.R.B. 20
96–18, 1996–14 I.R.B. 27
96–19, 1996–14 I.R.B. 28
96–20, 1996–14 I.R.B. 30
96–21, 1996–14 I.R.B. 30
96–22, 1996–14 I.R.B. 30
96–23, 1996–16 I.R.B. 23
96–24, 1996–16 I.R.B. 23
96–25, 1996–17 I.R.B. 11

Proposed Regulations:

DL–1–95, 1996–6 I.R.B. 28
EE–20–95, 1996–5 I.R.B. 15
EE–34–95, 1996–3 I.R.B. 49
EE–35–95, 1996–5 I.R.B. 19
EE–53–95, 1996–5 I.R.B. 23
EE–55–95, 1996–12 I.R.B. 12
EE–106–82, 1996–10 I.R.B. 31
EE–142–87, 1996–12 I.R.B. 13
EE–148–81, 1996–11 I.R.B. 29
IA–3–94, 1996–17 I.R.B. 12
IA–33–95, 1996–4 I.R.B. 99
IA–41–93, 1996–11 I.R.B. 29
INTL–3–95, 1996–6 I.R.B. 29
INTL–9–95, 1996–5 I.R.B. 25
INTL–54–95, 1996–14 I.R.B. 39
PS–2–95, 1996–7 I.R.B. 50
PS–6–95, 1996–16 I.R.B. 27

Revenue Procedures:

96–1, 1996–1 I.R.B. 8
96–2, 1996–1 I.R.B. 60
96–3, 1996–1 I.R.B. 82
96–4, 1996–1 I.R.B. 94
96–5, 1996–1 I.R.B. 129
96–6, 1996–1 I.R.B. 151
96–7, 1996–1 I.R.B. 185
96–8, 1996–1 I.R.B. 187
96–8A, 1996–9 I.R.B. 10
96–9, 1996–2 I.R.B. 15
96–10, 1996–2 I.R.B. 17
96–11, 1996–2 I.R.B. 18
96–12, 1996–3 I.R.B. 30
96–13, 1996–3 I.R.B. 31
96–14, 1996–3 I.R.B. 41
96–15, 1996–3 I.R.B. 41
96–16, 1996–3 I.R.B. 45
96–17, 1996–4 I.R.B. 69
96–18, 1996–4 I.R.B. 73
96–19, 1996–4 I.R.B. 80
96–20, 1996–4 I.R.B. 88
96–21, 1996–4 I.R.B. 96
96–22, 1996–5 I.R.B. 27
96–23, 1996–5 I.R.B. 27
96–24, 1996–5 I.R.B. 28
96–24A, 1996–15 I.R.B. 12
96–25, 1996–8 I.R.B. 19

Revenue Procedures—Continued

96–26, 1996–8 I.R.B. 22
96–27, 1996–11 I.R.B. 27
96–28, 1996–14 I.R.B. 31
96–29, 1996–16 I.R.B. 24

Revenue Rulings:

96–1, 1996–1 I.R.B. 7
96–2, 1996–2 I.R.B. 5
96–3, 1996–2 I.R.B. 14
96–6, 1996–2 I.R.B. 8
96–4, 1996–3 I.R.B. 16
96–5, 1996–3 I.R.B. 29
96–7, 1996–3 I.R.B. 12
96–8, 1996–4 I.R.B. 62
96–9, 1996–4 I.R.B. 5
96–10, 1996–4 I.R.B. 27
96–11, 1996–4 I.R.B. 28
96–12, 1996–9 I.R.B. 4
96–13, 1996–10 I.R.B. 19
96–14, 1996–6 I.R.B. 20
96–15, 1996–11 I.R.B. 9
96–16, 1996–11 I.R.B. 4
96–17, 1996–13 I.R.B. 5
96–18, 1996–13 I.R.B. 4
96–19, 1996–14 I.R.B. 24
96–20, 1996–15 I.R.B. 5
96–21, 1996–15 I.R.B. 7
96–22, 1996–15 I.R.B. 9
96–23, 1996–15 I.R.B. 11

Treasury Decisions:

8630, 1996–3 I.R.B. 19
8631, 1996–3 I.R.B. 7
8632, 1996–4 I.R.B. 6
8633, 1996–4 I.R.B. 20
8634, 1996–3 I.R.B. 17
8635, 1996–3 I.R.B. 5
8636, 1996–4 I.R.B. 64
8637, 1996–4 I.R.B. 29
8638, 1996–5 I.R.B. 5
8639, 1996–5 I.R.B. 12
8640, 1996–2 I.R.B. 10
8641, 1996–6 I.R.B. 4
8642, 1996–7 I.R.B. 4
8643, 1996–11 I.R.B. 4
8644, 1996–7 I.R.B. 16
8645, 1996–8 I.R.B. 4
8646, 1996–8 I.R.B. 10
8647, 1996–9 I.R.B. 7
8648, 1996–10 I.R.B. 23
8649, 1996–9 I.R.B. 5
8650, 1996–10 I.R.B. 5
8651, 1996–11 I.R.B. 24
8652, 1996–11 I.R.B. 11
8653, 1996–12 I.R.B. 4
8654, 1996–11 I.R.B. 14
8655, 1996–12 I.R.B. 9

¹See footnote at the end of list.

Numerical Finding List¹—Continued

Bulletins 1996–1 through 1996–17

Treasury Decisions—Continued

8656, 1996–13 I.R.B. 9

8657, 1996–14 I.R.B. 4

8658, 1996–14 I.R.B. 13

8659, 1996–16 I.R.B. 4

8660, 1996–17 I.R.B. 4

8661, 1996–17 I.R.B. 7

¹A cumulative list of all Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in Internal Revenue Bulletins 1995–27 through 1995–52 will be found in Internal Revenue Bulletin 1996–1, dated January 2, 1996.

Finding List of Current Action on Previously Published Items¹

Bulletins 1996-1 through 1996-17

*Denotes entry since last publication

Delegation Orders:

232 (Rev. 1)

Superseded by
232 (Rev. 2), 1996-7 I.R.B. 49

239

Amended by
239 (Rev. 1), 1996-7 I.R.B. 49

Revenue Procedures:

65-17

Modified by
96-14, 1996-3 I.R.B. 41

66-49

Modified by
96-15, 1996-3 I.R.B. 41

88-32

Obsoleted by
96-15, 1996-3 I.R.B. 41

88-33

Obsoleted by
96-15, 1996-3 I.R.B. 41

89-19

Superseded by
96-17, 1996-4 I.R.B. 69

89-48

Superseded in part by
96-17, 1996-4 I.R.B. 69

91-22

Modified by
96-1, 1996-1 I.R.B. 8

91-22

Amplified by
96-13, 1996-3 I.R.B. 31

91-23

Superseded by
96-13, 1996-3 I.R.B. 31

91-24

Superseded by
96-14, 1996-3 I.R.B. 41

91-26

Superseded by
96-13, 1996-3 I.R.B. 31

92-20

Modified by
96-1, 1996-1 I.R.B. 8

Revenue Procedures—Continued

92-85

Modified by
96-1, 1996-1 I.R.B. 8

93-16

Superseded by
96-11, 1996-2 I.R.B. 18

93-46

Superseded in part by
96-17, 1996-4 I.R.B. 69

93-46

Superseded by
96-18, 1996-4 I.R.B. 73

94-16

Modified by
96-29, 1996-16 I.R.B. 24

94-18

Superseded in part by
96-17, 1996-4 I.R.B. 69

94-18

Superseded by
96-18, 1996-4 I.R.B. 73

94-59

Superseded in part by
96-17, 1996-4 I.R.B. 69

94-59

Superseded by
96-18, 1996-4 I.R.B. 73

94-62

Modified by
96-29, 1996-16 I.R.B. 24

94-77

Superseded by
96-28, 1996-14 I.R.B. 31

95-1

Superseded by
96-1, 1996-1 I.R.B. 8

95-2

Superseded by
96-2, 1996-1 I.R.B. 60

95-3

Superseded by
96-3, 1996-1 I.R.B. 82

95-4

Superseded by
96-4, 1996-1 I.R.B. 94

95-5

Superseded by
96-5, 1996-1 I.R.B. 129

95-6

Superseded by
96-6, 1996-1 I.R.B. 151

Revenue Procedures—Continued

95-7

Superseded by
96-7, 1996-1 I.R.B. 185

95-8

Superseded by
96-8, 1996-1 I.R.B. 187

95-13

Superseded by
96-20, 1996-4 I.R.B. 88

95-20

Superseded by
96-24, 1996-5 I.R.B. 28

95-50

Superseded by
96-3, 1996-1 I.R.B. 82

96-3

Amplified by
96-12, 1996-3 I.R.B. 30

Revenue Rulings:

66-307

Obsoleted by
96-3, 1996-2 I.R.B. 14

72-437

Modified by
96-13, 1996-3 I.R.B. 31

80-80

Obsoleted by
96-3, 1996-2 I.R.B. 14

82-80

Modified by
96-14, 1996-3 I.R.B. 41

92-19

Supplemented in part
96-2, 1996-2 I.R.B. 5

92-75

Clarified by
96-13, 1996-3 I.R.B. 31

95-10

Supplemented and superseded by
96-4, 1996-3 I.R.B. 16

95-11

Supplemented and superseded by
96-5, 1996-3 I.R.B. 29

96-24

Modified and amplified by
96-24A, 1996-15 I.R.B. 12

¹A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1995-27 through 1995-52 will be found in Internal Revenue Bulletin 1996-1, dated January 2, 1996.