

## 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. 96-27, page 9.**

**Federal rates; adjusted federal rates; adjusted federal long-term rates, and the long-term exempt rate.** For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for June 1996.

**Rev. Rul. 96-28, page 11.**

**Interest rates; underpayments and overpayments.** The rate of interest determined under section 6621 of the Code for the calendar quarter beginning July 1, 1996, is 8 percent for overpayments, 9 percent for underpayments, and 11 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 is 6.5 percent.

**Rev. Rul. 96-29, page 5.**

**Reorganizations under section 368(a)(1)(F); series of steps in overall plan.** The merger of a corporation with one created in another state is a section 368(a)(1)(F) reorganization even though it is a step in a larger transaction that includes a series of steps.

**Rev. Rul. 96-30, page 4.**

**Spin-off of subsidiary, followed by its merger with unrelated corporation.** The form of the transaction, consisting of the distribution by a parent corporation of the stock of a subsidiary to its shareholders followed by a merger of the former subsidiary into an unrelated

corporation, reflected its substance, determined on the basis of all of the relevant facts and circumstances, and was respected for federal income tax purposes.

**T.D. 8670, page 6.**

Final regulations under section 482 of the Code relate to qualified cost sharing arrangements.

### EXEMPT ORGANIZATIONS

**Announcement 96-56, page 29.**

A list is given of organizations now classified as private foundations.

### ADMINISTRATIVE

**Notice 96-34, page 15.**

**Tax relief for those affected by Operation Joint Endeavor.** This notice provides guidance in a question and answer format on the tax relief provided under the Act of March 20, 1996, Pub. L. No. 104-117, 110 Stat. 827 (1996), for U.S. military and support personnel involved in the peacekeeping efforts in Bosnia and Herzegovina, Croatia, and Macedonia.

**PS-43-95, page 20.**

Proposed regulations under section 7701 of the Code simplify the existing classification rules for certain business organizations with an elective regime. A public hearing will be held on August 21, 1996.

Finding Lists begin on page 36.

Announcement of Disbarments and Suspensions begins on page 33.

# 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.

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

# 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 1996. See Rev. Rul. 96-27, page 9.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of June 1996. See Rev. Rul. 96-27, page 9.

## Section 355.—Distribution of Stock and Securities of a Controlled Corporation

26 CFR 1.355-2: Limitations.

The revenue ruling holds that the form of the transaction, consisting of the distribution by a parent corporation of the stock of a subsidiary to its shareholders followed by a merger of the former subsidiary into an unrelated corporation, reflects its substance, determined on the basis of all of the relevant facts and circumstances, and is respected for federal income tax purposes. See Rev. Rul. 96-30, on this page.

**Spin-off of subsidiary, followed by its merger with unrelated corporation.** The form of the transaction, consisting of the distribution by a parent corporation of the stock of a subsidiary to its shareholders followed by a merger of the former subsidiary into an unrelated corporation, reflected its substance, determined on the basis of all of the relevant facts and circumstances, and was respected for federal income tax purposes.

Rev. Rul. 96-30

ISSUE

If, under the facts below, a corporation distributes the stock of its wholly owned subsidiary to its shareholders and soon thereafter, the assets of the former subsidiary are acquired in a merger, is the form of the transaction respected for Federal income tax purposes?

FACTS

*D* corporation, whose stock is widely held and actively traded, is engaged in

the manufacture and sale of consumer products. *C* corporation, engaged in the production and distribution of prepared food products, has been a wholly owned subsidiary of *D* since *D* purchased the *C* stock eight years ago. Both *D* and *C* have actively conducted their respective businesses for more than five years.

For a valid business purpose, *D* adopted a plan whereby it distributed, on a pro rata basis to its shareholders, all of the *C* stock. No stock of *D* was surrendered.

Soon after the distribution, *Y*, an unrelated corporation, and *C* commenced negotiations leading to an agreement and plan of reorganization pursuant to which *C* was to be merged with and into *Y*. Pursuant to the agreement, the *C* stock would be converted into *Y* stock representing 25 percent of the outstanding stock of *Y*. Under applicable state law, the merger could not be consummated without the approval of the shareholders of *C*, and the agreement and plan of reorganization provided that such approval was a condition precedent to the merger. At the time of the distribution of the *C* stock to the *D* shareholders, there had been no negotiations or agreements relating to the transaction involving *C* and *Y*, although an acquisition of *C* was a possibility recognized by the management of *D* and *C* at such time.

The plan of reorganization was submitted to the *C* shareholders after it was approved by the directors of *C* in accordance with applicable state law. As a legal and practical matter, the *C* shareholders were free to vote their *C* stock for or against the merger. The *C* shareholders approved the merger at a meeting of the shareholders that had been specifically called for such purpose. *C* then merged with and into *Y* and the *C* stock was converted into *Y* stock in accordance with the plan. The merger satisfies all of the requirements of a reorganization under § 368(a)-(1)(A).

## LAW AND ANALYSIS

Section 355(a) of the Internal Revenue Code provides, in part, that where (1) a corporation distributes to its shareholders, with respect to its stock, either (a) all of the stock of a corporation which it controls imme-

diately before the distribution, or (b) subject to compliance with certain conditions not relevant to the facts of this ruling, an amount of stock constituting control of such a corporation, (2) the active-trade-or-business requirements of § 355(b) are met, and (3) the transaction is not used principally as a device to distribute earnings and profits, no gain or loss will be recognized to (and no amount will be includible in the income of) such shareholders on the receipt of such stock.

Section 355(c) provides, in effect, that no gain or loss shall be recognized to a corporation on a distribution, to which § 355 applies, of stock in the controlled corporation and that § 311 shall not apply to any such distribution.

*Commissioner v. Court Holding Co.*, 324 U.S. 331 (1945), holds that a sale of property by the shareholders of a corporation after receipt of the property as a liquidating distribution was taxable to the corporation when the corporation had in fact conducted all the negotiations and the terms of the sale had been agreed upon prior to the distribution of the property. However, *United States v. Cumberland Public Service Co.*, 338 U.S. 451 (1950), holds that a sale of assets by the shareholders after a distribution of the assets by the corporation pursuant to a liquidation was not taxable to the corporation. This latter decision was based on the finding of fact by the trial court to the effect that the corporation had rejected an offer to sell the property and the negotiations had been carried on by the shareholders after receipt of the property in liquidation.

In *Court Holding*, the Supreme Court recognized that “[t]he incidence of taxation depends upon the substance of a transaction.... [T]he transaction must be viewed as a whole, and each step, from the commencement of negotiations to the consummation of the sale, is relevant. A sale by one person cannot be transformed for tax purposes into a sale by another by using the latter as a conduit through which to pass title.” 324 U.S. 331, 334.

If the *C* stock had, in form, been exchanged by the *D* shareholders for *Y* stock under circumstances in which *D* had, in substance, made the exchange of the *C* stock, *D* would be treated as having distributed an amount of stock in *Y* that did not constitute control of *Y*.

As a result, one of the requirements of § 355 would not have been met. The determination of the substance of the transaction, *i.e.*, which party (*D* or the shareholders of *D*) had, in substance, disposed of the *C* stock for Federal income tax purposes is based on all of the relevant facts and circumstances.

In this case, the form of the transaction will be respected for Federal income tax purposes. At the time of the distribution of the *C* stock by *D*, there had been no negotiations regarding the acquisition of *C* by *Y*, and the only action taken by *D* with respect to the transaction was that the directors of *D* had authorized the distribution of the *C* stock to the shareholders of *D*. The *C* shareholders voted on the merger with *Y* after the distribution and were free to vote their stock for or against the merger. Based on all of the facts and circumstances, the substance of the transaction is a distribution of the *C* stock by *D* with respect to its stock followed by the exchange of the *C* stock by its shareholders for *Y* stock pursuant to the merger.

#### HOLDING

The form of the transaction, consisting of the distribution by *D* of the *C* stock to the *D* shareholders followed by the exchange of the *C* stock by the *D* shareholders for *Y* stock pursuant to the merger of *C* into *Y*, reflects its substance and will be respected for Federal income tax purposes.

#### EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 75-406 is modified.

#### APPLICATION OF SECTION 7805(b)

The Service will consider the application of § 7805(b) on a case-by-case basis.

#### FURTHER INFORMATION

For further information regarding this revenue ruling contact Filiz A. Serbes of the Office of Assistant Chief Counsel (Corporate) at (202) 622-7750 (not a toll-free call).

## Section 368.—Definitions Relating to Corporate Reorganizations

*26 CFR 1.368-1: Purpose and scope of exception of reorganization exchanges.*

The revenue ruling provides that under the facts below, the merger of a corporation with one created in another state is a section 368(a)(1)(F) reorganization even though it is a step in a larger transaction that includes a series of steps. See Rev. Rul. 96-29, on this page.

**Reorganizations under section 368(a)(1)(F); series of steps in overall plan.** The merger of a corporation with one created in another state is a section 368(a)(1)(F) reorganization even though it is a step in a larger transaction that includes a series of steps.

#### Rev. Rul. 96-29

#### ISSUE

Do the transactions described below qualify as reorganizations under § 368(a)(1)(F) of the Internal Revenue Code?

#### FACTS

*Situation 1.* *Q* is a manufacturing corporation all of the common stock of which is owned by twelve individuals. One class of nonvoting preferred stock, representing 40 percent of the aggregate value of *Q*, is held by a variety of corporate and noncorporate shareholders. *Q* is incorporated in state *M*. Pursuant to a plan to raise immediate additional capital and to enhance its ability to raise capital in the future by issuing additional stock, *Q* proposes to make a public offering of newly issued stock and to cause its stock to become publicly traded. *Q* entered into an underwriting agreement providing for the public offering and a change in its state of incorporation. The change in the state of incorporation was undertaken, in part, to enable the corporation to avail itself of the advantages that the corporate laws of state *N* afford to public companies and their officers and directors. In the absence of the public offering, *Q* would not have changed its state of incorporation. Pursuant to the underwriting agreement, *Q* changed its place of incorporation by merging with and into *R*, a newly organized corporation incorporated in state *N*. The shares

of *Q* stock were converted into the right to receive an identical number of shares of *R* stock. Immediately thereafter, *R* sold additional shares of its stock to the public and redeemed all of the outstanding shares of nonvoting preferred stock. The number of new shares sold was equal to 60 percent of all the outstanding *R* stock following the sale and redemption.

*Situation 2.* *W*, a state *M* corporation, is a manufacturing corporation all of the stock of which is owned by two individuals. *W* conducted its business through several wholly owned subsidiaries. The management of *W* determined that it would be in the best interest of *W* to acquire the business of *Z*, an unrelated corporation, and combine it with the business of *Y*, one of its subsidiaries, and to change the state of incorporation of *W*. In order to accomplish these objectives, and pursuant to an overall plan, *W* entered into a plan and agreement of merger with *Y* and *Z*. In accordance with the agreement, *Z* merged with and into *Y* pursuant to the law of state *M*, with the former *Z* shareholders receiving shares of newly issued *W* preferred stock in exchange for their shares of *Z* stock. Immediately following the acquisition of *Z*, *W* changed its place of organization by merging with and into *N*, a newly organized corporation incorporated in state *R*. Upon *W*'s change of place of organization, the holders of *W* common and preferred stock surrendered their *W* stock in exchange for identical *N* common and preferred stock, respectively.

#### LAW AND ANALYSIS

Section 368(a)(1)(F) provides that a reorganization includes a mere change in identity, form, or place of organization of one corporation, however effected. This provision was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, in order to limit its application to one corporation. Certain limitations contained in § 381(b), including those precluding the corporation acquiring property in a reorganization from carrying back a net operating loss or a net capital loss for a taxable year ending after the date of transfer to a taxable year of the transferor, do not apply to reorganizations described in § 368(a)(1)(F) "in recognition of the intended scope of such reorganizations as em-

bracing only formal changes in a single operating corporation.” H.R. Rep. No. 760, 97th Cong., 2d Sess. 540, 541 (1982). Although a change in the place of organization usually must be effected through the merger of one corporation into another, such a transaction qualifies as a reorganization under § 368(a)(1)(F) because it involves only one operating corporation. The 1982 amendment of § 368(a)(1)(F) thus overruled several cases in which a merger of two or more operating corporations could be treated as a reorganization under § 368(a)(1)(F). See, e.g., *Estate of Stauffer v. Commissioner*, 403 F.2d 611 (9th Cir. 1968); *Associated Machine, Inc. v. Commissioner*, 403 F.2d 622 (9th Cir. 1968); and *Davant v. Commissioner*, 366 F.2d 874 (5th Cir. 1966).

A transaction does not qualify as a reorganization under § 368(a)(1)(F) unless there is no change in existing shareholders or in the assets of the corporation. However, a transaction will not fail to qualify as a reorganization under § 368(a)(1)(F) if dissenters owning fewer than 1 percent of the outstanding shares of the corporation fail to participate in the transaction. Rev. Rul. 66-284, 1966-2 C.B. 115.

The rules applicable to corporate reorganizations as well as other provisions recognize the unique characteristics of reorganizations qualifying under § 368(a)(1)(F). In contrast to other types of reorganizations, which can involve two or more operating corporations, a reorganization of a corporation under § 368(a)(1)(F) is treated for most purposes of the Code as if there had been no change in the corporation and, thus, as if the reorganized corporation is the same entity as the corporation that was in existence prior to the reorganization. See § 381(b); § 1.381(b)-1(a)(2); see also Rev. Rul. 87-110, 1987-2 C.B. 159; Rev. Rul. 80-168, 1980-1 C.B. 178; Rev. Rul. 73-526, 1973-2 C.B. 404; Rev. Rul. 64-250, 1964-2 C.B. 333.

In Rev. Rul. 69-516, 1969-2 C.B. 56, the Internal Revenue Service treated as two separate transactions a reorganization under § 368(a)(1)(F) and a reorganization under § 368(a)(1)(C) undertaken as part of the same plan. Specifically, a corporation changed its place of organization by merging into a corporation formed under the laws of another state and, immediately thereafter, it transferred substantially all of its assets in exchange for stock of an

unrelated corporation. The ruling holds that the change in place of organization qualified as a reorganization under § 368(a)(1)(F).

Accordingly, in *Situation 1*, the reincorporation by *Q* in state *N* qualifies as a reorganization under § 368(a)(1)(F) even though it was a step in the transaction in which *Q* was issuing common stock in a public offering and redeeming stock having a value of 40 percent of the aggregate value of its outstanding stock prior to the offering.

In *Situation 2*, the reincorporation by *W* in state *N* qualifies as a reorganization under § 368(a)(1)(F) even though it was a step in the transaction in which *W* acquired the business of *Z*.

## HOLDING

On the facts set forth in this ruling, in each of *Situations 1* and *2*, the reincorporation transaction qualifies as a reorganization under § 368(a)(1)(F), notwithstanding the other transactions effected pursuant to the same plan.

## EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 79-250, 1979-2 C.B. 156, addressed a similar issue on facts that are substantially similar, in all material respects, to those of *Situation 2*. The ruling holds that a merger of *Z* with and into *Y* in exchange for the stock of *W* qualifies as a reorganization under § 368(a)(1)(A) by reason of § 368(a)-(2)(D), even though *W* is reincorporated in another state immediately after the merger. The ruling also holds that the reincorporation qualifies as a reorganization under § 368(a)(1)(F). Rev. Rul. 79-250 did not apply the step transaction doctrine in order to combine the two transactions, stating that the merger and the subsequent reincorporation were separate transactions because “the economic motivation supporting each transaction is sufficiently meaningful on its own account, and is not dependent upon the other transaction for its substantiation.”

Although the holding of Rev. Rul. 79-250 is correct on the facts presented therein, in order to emphasize that central to the holding in Rev. Rul. 79-250 is the unique status of reorganizations under § 368(a)(1)(F), and that Rev. Rul. 79-250 is not intended to reflect the application of the step-

transaction doctrine in other contexts, Rev. Rul. 79-250 is modified.

## FURTHER INFORMATION

For further information regarding this revenue ruling contact Marnie Rapaport of the Office of Assistant Chief Counsel (Corporate) at (202) 622-7550 (not a toll-free call).

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

The adjusted federal long-term rate is set forth for the month of June 1996. See Rev. Rul. 96-27, page 9.

### 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 1996. See Rev. Rul. 96-27, page 9.

### 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 1996. See Rev. Rul. 96-27, page 9.

### 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 1996. See Rev. Rul. 96-27, page 9.

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

26 CFR 1.482-7: *Sharing of costs.*

T.D. 8670

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

### Revision of Section 482 Cost Sharing Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to qualified cost sharing arrangements under section 482 of the Internal Revenue Code. These regulations reflect technical changes to the requirements for qualification as a controlled participant under the final cost sharing regulations published in the **Federal Register** on December 20, 1995.

DATES: These regulations are effective May 13, 1996.

These regulations are applicable for taxable years beginning on or after January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Lisa Sams of the Office of Associate Chief Counsel (International), IRS (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### *Background*

Section 482 was amended by the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085, 2561, et. seq. (1986-3 C.B. (Vol. 1) 1, 478). On January 30, 1992, a notice of proposed rulemaking concerning the section 482 amendment in the context of cost sharing was published in the **Federal Register** (INTL-0372-88, 57 FR 3571).

Written comments were received with respect to the notice of proposed rulemaking, and a public hearing was held on August 31, 1992.

On December 20, 1995, final regulations were published in the **Federal Register** (INTL-0372-88, 60 FR 65553) as Treasury Decision 8632. These final regulations amend the regulations contained in Treasury Decision 8632 by making technical changes to the requirements for qualification as a controlled participant contained in §1.482-7(c).

The agency has decided not to issue a second notice of proposed rulemaking with respect to the modifications to TD 8632 contained in these final regulations. The rules to which the modifications relate (concerning qualification as a controlled participant) were the subject of the notice of proposed rulemaking published on January 30, 1992, and

comments on those rules were received in connection with those proposed regulations. Therefore, a further comment period on these rules is unnecessary. Taxpayers need prompt guidance on how to conform their arrangements to the rules set forth in TD 8632, which is effective for taxable years beginning on or after January 1, 1996, and which provides a one year transition period for amending arrangements. The modifications contained in these final regulations will aid taxpayers in that regard, and any delay caused by a second notice of proposed rulemaking would be impracticable and contrary to the public interest. Unsolicited comment letters were received in connection with TD 8632 and are available for public inspection in the FOIA reading room.

#### *Explanation of Provisions*

The purpose of these regulations is to rectify problems in qualifying as a controlled participant caused by the technical requirements of the active conduct rule of §1.482-7(c). This rule provided that a controlled taxpayer may be a controlled participant only if it uses or reasonably expects to use covered intangibles in the active conduct of a trade or business.

Under the 1992 proposed cost sharing regulations, a member of a group of controlled taxpayers could participate in a qualified cost sharing arrangement on behalf of, and could satisfy the active conduct rule based on activities performed by, one or more other members of the group (a cost sharing subgroup). The participating subgroup member would then transfer or license the intangibles developed under the arrangement to the nonparticipating subgroup member(s). The proposed regulations would have measured benefits in such case on the basis of the benefits of the entire subgroup from exploiting the intangibles. TD 8632, in streamlining the participation rules, omitted the subgroup rules. Taxpayers commented that the change would force them to amend existing arrangements to include as a participant every operating company that predictably would be using covered intangibles.

These regulations further streamline the participation rules. The principal reason for the active conduct rule was to ensure that a controlled participant stands to benefit from the use of

covered intangibles in a manner that can be reliably measured. The Treasury and Service have concluded that this purpose can be accomplished without the active conduct rule. No distinction need be made based on the nature of a participant's use of covered intangibles, so long as its benefits from such use (whether from directly exploiting the intangibles or from transferring or licensing them to others) can be reliably measured.

Accordingly, these regulations eliminate the active conduct rule of §1.482-7(c) as a requirement for qualification as a controlled participant in a qualified cost sharing arrangement. Section 1.482-7(c)(1) of these regulations substitutes a general rule that a controlled taxpayer may be a controlled participant in a cost sharing arrangement only if it reasonably anticipates that it will derive benefits from the use of covered intangibles. In addition, §1.482-7(f)(3)(ii) provides that if a controlled participant transfers covered intangibles to another controlled taxpayer, the participant's benefits will be measured with reference to the transferee's benefits rather than with reference to any consideration paid by the transferee. (This gives rise to results similar to those under the subgroup rules of the proposed regulations by different mechanics.) Finally, §1.482-7(f)(3)(ii) continues to provide that the amount of benefits that each of the controlled participants is reasonably anticipated to derive from covered intangibles must be measured on a basis that is consistent for all such participants.

These changes ensure that a controlled participant must benefit from the arrangement, that the basis for measuring benefits must be consistent for all controlled participants, and that, in the event of intragroup transfers, there will be "look through" treatment for reliably measuring benefits. These rules allow a participant to exploit covered intangibles itself or through transferring or licensing them to others, so long as the benefits to be derived can be consistently and reliably measured for all controlled participants.

These regulations also clarify that the documentation requirements of §1.482-7(j)(2) will satisfy the principal document requirement of §1.6662-6(d)(iii)(B) with respect to a qualified cost sharing arrangement.

\* \* \* \* \*

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) 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, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Lisa Sams, Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.482-0 is amended by revising the entries for §1.482-7(c) and (j) to read as follows:

§1.482-0 Outline of regulations under 482.

\* \* \* \* \*

§1.482-7 Sharing of costs.

\* \* \* \* \*

- (c) Participant.
  - (1) In general.
  - (2) Treatment of a controlled taxpayer that is not a controlled participant.
    - (i) In general.
    - (ii) Example.
  - (3) Treatment of consolidated group.

- (j) Administrative requirements.
  - (1) In general.
  - (2) Documentation.
    - (i) Requirements.
      - (ii) Coordination with penalty regulation.
  - (3) Reporting requirements.

\* \* \* \* \*

Par. 3. Section 1.482-7 is amended as follows:

- a. By revising paragraph (c)(1)(i).
- b. By adding paragraph (c)(1)(iv).
- c. By removing paragraphs (c)(2) and (c)(3) and redesignating paragraphs (c)(4) and (c)(5) as paragraphs (c)(2) and (c)(3), respectively.
- d. By revising newly designated paragraph (c)(2)(ii).
- e. By adding a sentence after the second sentence in paragraph (f)(3)(ii).
- f. By revising Example 8 of paragraph (f)(3)(iii)(E).
- g. By redesignating the text of paragraph (j)(2) following the heading as paragraph (j)(2)(i) and adding a heading for newly designated paragraph (j)(2)(i).
- h. By removing the language “(j)(2)” and adding “(j)(2)(i)” in its place in the first sentence of newly designated paragraph (j)(2)(i).
- i. By adding a paragraph (j)(2)(ii).

The additions and revisions read as follows:

§1.482-7 Sharing of costs.

\* \* \* \* \*

- (c) \* \* \* (1) \* \* \*
  - (i) Reasonably anticipates that it will derive benefits from the use of covered intangibles;

\* \* \* \* \*

- (iv) The following example illustrates paragraph (c)(1)(i) of this section:

Example. Foreign Parent (FP) is a foreign corporation engaged in the extraction of a natural resource. FP has a U.S. subsidiary (USS) to which FP sells supplies of this resource for sale in the United States. FP enters into a cost sharing arrangement with USS to develop a new machine to extract the natural resource. The machine uses a new extraction process that will be patented in the United States and in other countries. The cost sharing arrangement provides that USS will receive the rights to use the machine in the extraction of the natural resource in the United States, and FP will receive the rights in the rest

of the world. This resource does not, however, exist in the United States. Despite the fact that USS has received the right to use this process in the United States, USS is not a qualified participant because it will not derive a benefit from the use of the intangible developed under the cost sharing arrangement.

(2) \* \* \*

(ii) Example. The following example illustrates this paragraph (c)(2):

Example. (i) U.S. Parent (USP), one foreign subsidiary (FS), and a second foreign subsidiary constituting the group’s research arm (R+D) enter into a cost sharing agreement to develop manufacturing intangibles for a new product line A. USP and FS are assigned the exclusive rights to exploit the intangibles respectively in the United States and the rest of the world, where each presently manufactures and sells various existing product lines. R+D is not assigned any rights to exploit the intangibles. R+D’s activity consists solely in carrying out research for the group. It is reliably projected that the shares of reasonably anticipated benefits of USP and FS will be 66 2/3% and 33 1/3%, respectively, and the parties’ agreement provides that USP and FS will reimburse 66 2/3% and 33 1/3%, respectively, of the intangible development costs incurred by R+D with respect to the new intangible.

(ii) R+D does not qualify as a controlled participant within the meaning of paragraph (c) of this section, because it will not derive any benefits from the use of covered intangibles. Therefore, R+D is treated as a service provider for purposes of this section and must receive arm’s length consideration for the assistance it is deemed to provide to USP and FS, under the rules of §1.482-4(f)(3)(iii). Such consideration must be treated as intangible development costs incurred by USP and FS in proportion to their shares of reasonably anticipated benefits (i.e., 66 2/3% and 33 1/3%, respectively). R+D will not be considered to bear any share of the intangible development costs under the arrangement.

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(ii) \* \* \* If a controlled participant transfers covered intangibles to another controlled taxpayer, such participant’s benefits from the transferred intangibles must be measured by reference to the transferee’s benefits, disregarding any consideration paid by the transferee to the controlled participant (such as a royalty pursuant to a license agreement). \* \* \*

(iii) \* \* \*

(E) \* \* \*



*Example 8.* U.S. Parent (USP), Foreign Subsidiary 1 (FS1) and Foreign Subsidiary 2 (FS2) enter into a cost sharing arrangement to develop computer software that each will market and install on customers' computer systems. The participants divide costs on the basis of projected sales by USP, FS1, and FS2 of the software in their respective geographic areas. However, FS1 plans not only to sell but also to license the software to unrelated customers, and FS1's licensing income (which is a percentage of the licensees' sales) is not counted in the projected benefits. In this case, the basis used for measuring the benefits of each participant is not the most reliable because all of the benefits received by participants are not taken into account. In order to reliably determine benefit shares, FS1's projected benefits from licensing must be included in the measurement on a basis that is the same as that used to measure its own and the other participants' projected benefits from sales (*e.g.*, all participants might measure their benefits on the basis of operating profit).

\* \* \* \* \*

(j) \* \* \*

(2) *Documentation*—(i) *Requirements.* \* \* \*

(ii) *Coordination with penalty regulation.* The documents described in paragraph (j)(2)(i) of this section will satisfy the principal documents requirement under §1.6662-6(d)(2)(iii)(B)

with respect to a qualified cost sharing arrangement.

\* \* \* \* \*

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Approved May 2, 1996.

Leslie Samuels,  
*Assistant Secretary of the Treasury.*

(Filed by the Office of the Federal Register on May 9, 1996, 8:45 a.m., and published in the issue of the Federal Register for May 13, 1996, 61 F.R. 21955)

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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 1996. See Rev. Rul. 96-27, on this page.

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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 1996. See Rev. Rul. 96-27, on this page.

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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 1996. See Rev. Rul. 96-27, on this page.

**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, 807, 846, 1288, 7520, 7872.)

**Federal rates; adjusted federal rates; adjusted federal long-term rates, and the long-term exempt rate.** For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for June 1996.

**Rev. Rul. 96-27**

This revenue ruling provides various prescribed rates for federal income tax purposes for June 1996 (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)(2) for buildings placed in service during the current month. 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. 96-27 TABLE 1

Applicable Federal Rates (AFR) for June 1996

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	5.88%	5.80%	5.76%	5.73%
110 AFR	6.48%	6.38%	6.33%	6.30%
120 AFR	7.08%	6.96%	6.90%	6.86%
130 AFR	7.68%	7.54%	7.47%	7.42%
<i>Mid-Term</i>				
AFR	6.58%	6.48%	6.43%	6.39%
110 AFR	7.26%	7.13%	7.07%	7.03%
120 AFR	7.93%	7.78%	7.71%	7.66%
130 AFR	8.60%	8.42%	8.33%	8.28%
150 AFR	9.96%	9.72%	9.60%	9.53%
175 AFR	11.66%	11.34%	11.18%	11.08%
<i>Long-Term</i>				
AFR	7.04%	6.92%	6.86%	6.82%
110 AFR	7.75%	7.61%	7.54%	7.49%
120 AFR	8.47%	8.30%	8.22%	8.16%
130 AFR	9.20%	9.00%	8.90%	8.84%

REV. RUL. 96-27 TABLE 2

Adjusted AFR for June 1996

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
adjusted AFR	3.93%	3.89%	3.87%	3.86%
<i>Mid-term</i>				
adjusted AFR	4.81%	4.75%	4.72%	4.70%
<i>Long-term</i>				
adjusted AFR	5.78%	5.70%	5.66%	5.63%

REV. RUL. 96-27 TABLE 3

Rates Under Section 382 for June 1996

Adjusted federal long-term rate for the current month	5.78%
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.)	5.78%

REV. RUL. 96-27 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for June 1996

Appropriate percentage for the 70% present value low-income housing credit	8.60%
Appropriate percentage for the 30% present value low-income housing credit	3.69%

REV. RUL. 96-27 TABLE 5

Rate Under Section 7520 for June 1996

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	8%
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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 1996. See Rev. Rul. 96-27, page 9.

**Section 6621.— Determination of Interest Rate**

26 CFR 301.6621-1: Interest rate.

**Interest rates; underpayments and overpayments.** The rate of interest determined under section 6621 of the Code for the calendar quarter beginning July 1, 1996, is 8 percent for overpayments, 9 percent for underpayments, and 11 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate

overpayment exceeding \$10,000 is 6.5 percent.

**Rev. Rul. 96-28**

Section 6621 of the Internal Revenue Code establishes different rates for interest on tax overpayments and interest on tax underpayments. Under § 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 2 percentage points, except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under § 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under

§ 6601 on any large corporate underpayment, the underpayment rate under § 6621(a)(2) is determined by substituting “5 percentage points” for “3 percentage points.” See § 6621(c) and § 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable rate. Section 6621(c) and § 301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under § 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of ½ of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that in determining the quarterly interest rates to be used for overpayments and underpayments of tax under § 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with § 6621 which, pursuant to § 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of April 1996 is 6 percent. Accordingly, an overpayment rate of 8 percent and an underpayment rate of 9 percent are established for the calendar quarter beginning July 1, 1996. The overpayment rate for the portion of corporate overpayments exceeding \$10,000 for the calendar quarter beginning July 1, 1996, is 6.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning July 1, 1996, is 11 percent. These rates apply to amounts bearing interest during that calendar quarter.

Interest factors for daily compound interest for annual rates of 6.5 percent,

8 percent, 9 percent, and 11 percent are published in Tables 66, 69, 71, and 75 of Rev. Proc. 95-17, 1995-1 C.B. 556, 620, 623, 625, and 629.

Annual interest rates to be compounded daily pursuant to § 6622 that apply for prior periods are set forth in the accompanying tables.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Marcia Rachy of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Ms. Rachy on (202) 622-4940 (not a toll-free call).

### TABLE OF INTEREST RATES

PERIODS BEFORE JUL. 1, 1975 — PERIODS ENDING DEC. 31, 1986

#### OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	DAILY RATE TABLE IN 1995-1 C.B.
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25 pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES

FROM JAN. 1, 1987 — PRESENT

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	TABLE	PG	RATE	TABLE	PG
	1995-1 C.B.			1995-1 C.B.		
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625

TABLE OF INTEREST RATES FOR LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 — PRESENT

	RATE	TABLE	PG
	1995-1 C.B.		
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629

TABLE OF INTEREST RATES FOR CORPORATE  
OVERPAYMENTS EXCEEDING \$10,000

FROM JANUARY 1, 1995 — PRESENT

	RATE	TABLE	PG
	1995-1 C.B.		
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620

**Section 7520.—Valuation Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1996. See Rev. Rul. 96-27, page 9.

**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 1996. See Rev. Rul. 96-27, page 9.

## Part III. Administrative, Procedural, and Miscellaneous

### Tax Relief for Those Affected by Operation Joint Endeavor

Notice 96-34

#### PURPOSE

This notice provides guidance in a question and answer format on the tax relief provided under the Act of March 20, 1996 (the "Act"), Pub. L. No. 104-117, 110 Stat. 827 (1996), for U.S. military and support personnel involved in the peacekeeping efforts in Bosnia and Herzegovina, Croatia, and Macedonia.

#### BACKGROUND

The Act generally provides that members of the U.S. Armed Forces performing services for the peacekeeping efforts in a "qualified hazardous duty area" are treated for tax purposes in the same manner as if the area were a combat zone (as determined under § 112 of the Internal Revenue Code). The Act defines the term "qualified hazardous duty area" to mean Bosnia and Herzegovina, Croatia, or Macedonia, if, as of the date of enactment of the Act any member of the U.S. Armed Forces is entitled to special pay under section 310 of title 37, United States Code (relating to special pay; duty subject to hostile fire or imminent danger), for services performed in any of these countries, but only during the period the entitlement is in effect. On the date of the enactment of the Act, members of the U.S. Armed Forces were entitled to special pay for services performed in all of these countries.

A qualified hazardous duty area is treated in the same manner as a combat zone under § 112 for the purposes of the following eight Code provisions:

(1) Section 2(a)(3) (relating to the special rule where a deceased spouse was in missing status);

(2) Section 112 (relating to the exclusion from gross income of certain military pay received by members of the U.S. Armed Forces);

(3) Section 692 (relating to income taxes of members of the U.S. Armed Forces on death);

(4) Section 2201 (relating to members of the U.S. Armed Forces dying in

a combat zone or by reason of combat-zone-incurred wounds, etc.);

(5) Section 3401(a)(1) (defining wages relating to certain military pay for members of the U.S. Armed Forces);

(6) Section 4253(d) (relating to taxation of phone service originating from members of the U.S. Armed Forces in a combat zone);

(7) Section 6013(f)(1) (relating to a joint return where an individual is in missing status); and

(8) Section 7508 (relating to the time for performing certain tax actions (including filing, paying, assessing, collecting, claiming a refund, and litigating) postponed by reason of service in a combat zone).

Under the Act, the deadline extension provisions under § 7508 apply to members of the U.S. Armed Forces (and those serving in support of the U.S. Armed Forces) in the qualified hazardous duty area. In addition, during the period the special pay entitlement is in effect in Bosnia and Herzegovina, Croatia, or Macedonia, the deadline extension provisions under § 7508 also apply to an individual in other areas who (1) is performing services as part of Operation Joint Endeavor, (2) is outside the United States, and (3) is deployed away from that individual's permanent duty station.

The Act also amends § 112(b) to raise the dollar amount of the exclusion from gross income of military pay for commissioned officers from \$500 per month to the "maximum enlisted amount." New § 112(c)(5) defines the term "maximum enlisted amount" for any month as the sum of (a) the highest rate of basic pay for that month payable to any enlisted member of the U.S. Armed Forces in the highest enlisted pay grade, and (b) in the case of an officer entitled to special pay under 37 U.S.C. § 310, the amount of the special pay for that month payable to that officer.

The Act amends § 3401(a)(1) by limiting the exclusion from federal income tax withholding on military pay to the amount of military pay that is excludable from gross income under § 112.

The Act is generally effective on November 21, 1995, except for the modifications to the income tax with-

holding rules of § 3401(a)(1), which apply to amounts paid after the March 20, 1996, date of enactment.

#### QUESTIONS AND ANSWERS

The following questions and answers generally apply to members of the U.S. Armed Forces on active duty, and are patterned after the questions and answers in Publication 945, Tax Information for Those Affected by Operation Desert Storm. For additional information on reservists, decedents, or persons missing in action, consult Publication 945 and Publication 3, Tax Information for Military Personnel (Including Reservists Called to Active Duty).

#### PART 1—MILITARY PAY EXCLUSION

Q-1: Which geographic areas does the Act include in the qualified hazardous duty area?

A-1: The geographic areas included in the qualified hazardous duty area are Bosnia and Herzegovina, Croatia, and Macedonia.

Q-2: I am a member of the U.S. Armed Forces assigned to perform peacekeeping services in Bosnia and Herzegovina. Is any part of my 1996 military pay for serving in this qualified hazardous duty area excluded from gross income?

A-2: Yes. If you serve in a qualified hazardous duty area as an enlisted person for any part of a month, all your military pay received for military service that month is excluded from gross income. Commissioned officers have a similar exclusion, but it is limited to the maximum enlisted amount per month (currently \$4,254.90). Amounts excluded from gross income are not subject to federal income tax.

Q-3: Assuming the same facts as in question 2 except that my military pay was earned in 1995, is any part of my 1995 military pay for serving in this qualified hazardous duty area excluded from gross income?

A-3: Yes. Since the Act was generally effective on November 21, 1995, the same military pay exclusion rules set forth in Q & A 2 apply to military pay received by enlisted personnel or commissioned officers for services per-

formed during any part of December 1995 in the qualified hazardous duty area. The same is true for military pay they received for service in November 1995, if they served in that area on or after November 21, 1995 and before December 1, 1995. The maximum enlisted amount per month in 1995 was \$4,158.60.

Q-4: How do I exclude from gross income the military pay received for service in the qualified hazardous duty area during November and December 1995?

A-4: The U.S. Army, U.S. Navy, U.S. Air Force, and U.S. Coast Guard will issue Form W-2c, Statement of Corrected Income and Tax Amounts, to all members of the U.S. Armed Forces who served in the qualified hazardous duty area in 1995 (that is, for any period on or after November 21, 1995). Once you have received your Form W-2c, you can use it to file your 1995 federal individual income tax return if you have not yet filed. You will need to file Form 1040X, Amended U.S. Individual Income Tax Return, if you have previously filed your 1995 federal individual income tax return.

Q-5: My husband and I are both enlisted personnel serving in the U.S. Armed Forces in the qualified hazardous duty area. Are we both entitled to the income tax exclusion for military pay?

A-5: Yes. Each of you qualifies for the income tax exclusion for your military pay.

Q-6: I am a member of the U.S. Armed Forces stationed in Italy. I fly patrols over Bosnia and Herzegovina, in direct support of the military operations there, for which I receive hostile fire/imminent danger pay. Is any part of my military pay excluded from gross income?

A-6: Yes. Under the Act and regulations in effect prior to the Act, you are treated as serving in the qualified hazardous duty area because you are a member of the U.S. Armed Forces serving in direct support of military operations in the qualified hazardous duty area for which you receive hostile fire/imminent danger pay. See Q & A 2 for a discussion of the amount of your military pay that is excluded.

Q-7: If I am injured and hospitalized while serving in the U.S. Armed Forces in the qualified hazardous duty area, is

any of my military pay excluded from gross income?

A-7: Yes. Military pay received by enlisted personnel who are hospitalized as a result of injuries sustained while serving in the qualified hazardous duty area is excluded from gross income. Commissioned officers have a similar exclusion, but it is limited to the maximum enlisted amount per month. See Q & A 2. These exclusions from gross income for hospitalized enlisted personnel and commissioned officers end 2 years after the date of termination of the qualified hazardous duty area designation.

Q-8: My wife is currently serving in the U.S. Armed Forces in the qualified hazardous duty area and will be eligible for discharge when she returns home. If she is discharged upon her return, will the payment for the annual leave that she accrued during her service in the qualified hazardous duty area be excluded from gross income?

A-8: Yes. Annual leave payments made to enlisted members of the U.S. Armed Forces at the time of their discharge from the service are excluded from gross income to the extent the leave was accrued during any month in any part of which the member served in the qualified hazardous duty area. If your wife is a commissioned officer, a portion of the annual leave payment she receives for leave accrued during any month in any part of which she served in the qualified hazardous duty area may be excluded. The leave payment cannot be excluded to the extent it exceeds the maximum enlisted amount (see Q & A 2) for the month of service to which it relates less the amount of military pay already excluded for that month.

Q-9: My brother, who is a civilian in the merchant marine, is on a ship that transports military supplies between the United States and the qualified hazardous duty area. Is he entitled to the qualified hazardous duty area military pay exclusion?

A-9: No. Those serving in the merchant marine are not members of the U.S. Armed Forces. The qualified hazardous duty area military pay exclusion applies only to members of the U.S. Armed Forces. The U.S. Armed Forces include all regular and reserve components of the uniformed services that are under the control of the Secretaries of Defense, Army, Navy, and Air Force, as well as the Coast Guard.

Q-10: My husband is a member of the U.S. Armed Forces performing services as part of Operation Joint Endeavor in Germany. He is not receiving hostile fire/imminent danger pay. Is he entitled to the military pay exclusion?

A-10: No. U.S. Armed Forces personnel serving outside the qualified hazardous duty area are not entitled to the military pay exclusion, unless they are serving in direct support of military operations in the qualified hazardous duty area for which they receive hostile fire/imminent danger pay (see Q & A 6). For a more detailed discussion of the tax treatment of military personnel, see Publication 3. For a discussion of possible extension of deadlines, see Q & A's 29 and 30.

## PART 2—EXTENSION OF DEADLINES

Q-11: I have been serving in Croatia since March 1, 1996. I understand that the deadline for performing certain actions required by the internal revenue laws is extended as a result of my service. On what date did these deadline extensions begin?

A-11: The deadline extension provisions apply to most tax actions required to be performed on or after November 21, 1995, or the date you began serving in the qualified hazardous duty area, whichever is later. In your case, the date that the deadline extensions began is March 1, 1996.

Q-12: My son is a member of the U.S. Armed Forces who is now serving in the qualified hazardous duty area. Is he entitled to an extension of time for filing and paying his federal income taxes? Are any assessment or collection deadlines extended?

A-12: For both questions, the answer is yes. In general, the deadlines for performing certain actions applicable to his federal taxes are extended for the period of his service in the qualified hazardous duty area on or after November 21, 1995, plus 180 days thereafter. During this extension period, assessment and collection deadlines will be extended, and interest and penalties attributable to the extension period will not be charged.

Q-13: Assuming the same facts as in question 12, would my son still have an extension for filing and paying his federal individual income taxes if he has unearned income from investments?



A-13: Yes. The extension applies without regard to the source of your son's income.

Q-14: Assuming the same facts as in question 12, will the deadline extension provisions continue to apply if my son is hospitalized as a result of an injury sustained in the qualified hazardous duty area?

A-14: Yes. The deadline extension provisions will apply for the period that your son is continuously hospitalized outside of the United States as a result of injuries sustained while serving in the qualified hazardous duty area. For hospitalization inside the United States, the extension period cannot be more than 5 years.

Q-15: Do the deadline extension provisions apply only to members of the U.S. Armed Forces serving in the qualified hazardous duty area?

A-15: No. The deadline extension provisions also apply to individuals serving in a qualified hazardous duty area in support of the U.S. Armed Forces, such as Red Cross personnel, accredited correspondents, and civilian personnel acting under the direction of the U.S. Armed Forces in support of those forces.

Q-16: My son is a civilian explosive specialist who is in Macedonia training U.S. Armed Forces personnel serving in the qualified hazardous duty area. Do the deadline extension provisions apply to my son?

A-16: Yes. The deadline extension provisions apply to your son because he is serving in the qualified hazardous duty area in support of the U.S. Armed Forces.

Q-17: My husband is a private businessman working in Bosnia and Herzegovina on nonmilitary projects. Do the deadline extension provisions apply to my husband?

A-17: No. Other than military personnel, the only individuals working in the qualified hazardous duty area that are entitled to the deadline extension provisions are those serving in support of the U.S. Armed Forces.

Q-18: I am a member of the U.S. Armed Forces serving in the qualified hazardous duty area. Do the deadline extension provisions apply to my husband who is in the United States?

A-18: Yes. The deadline extension provisions apply not only to members

serving in the U.S. Armed Forces (or individuals serving in support thereof) in the qualified hazardous duty area, but to their spouses as well, with two exceptions. First, if you are hospitalized in the United States as a result of injuries received while serving in the qualified hazardous duty area, the deadline extension provisions would not apply to your husband. Second, the deadline extension provisions for your husband do not apply for any tax year beginning more than 2 years after the date of the termination of the qualified hazardous duty area designation.

Q-19: Assuming the same facts as in question 18, will my husband have to file a joint tax return in order to benefit from the deadline extension provisions?

A-19: No. The deadline extension provisions apply to both spouses whether joint or separate returns are filed. If your husband chooses to file a separate return, he will have the same extension of time to file and pay his taxes that you have.

Q-20: My husband is serving in the U.S. Armed Forces in the qualified hazardous duty area. In 1995, our son, who is 12 years old, received \$700 of interest income. Our daughter, who is 17 years old, received \$2,000 of earned income from part-time work and \$900 of interest income. We claim both children as dependents on our federal individual income tax return. Are federal individual income tax returns required to be filed for our children while my husband is in the qualified hazardous duty area?

A-20: No. Federal individual income tax returns for your dependent children are not required to be filed while your husband is in the qualified hazardous duty area. Instead, these returns will be considered timely if filed on or before the deadline for filing your federal individual income tax return under the deadline extension provisions. The U.S. Armed Forces will provide your husband with instructions on how to notify the IRS of your children's eligibility to receive this extension of time to file. Since your older child may be entitled to a refund of tax, she may want to file her federal individual income tax return and obtain her refund.

Q-21: I am a member of the U.S. Armed Forces serving in Croatia. My spouse and our three children live in our home in the United States. During 1995, a child care provider took care of

our children in our home. We are required to file a Schedule H, Household Employment Taxes, as an attachment to our federal individual income tax return to report the federal employment taxes on wages we paid to our child care provider. Do the deadline extension provisions apply to the filing of Schedule H as an attachment to our federal individual income tax return?

A-21: Yes. The deadline extension provisions apply to all schedules and forms that are filed as attachments to the federal individual income tax return.

Q-22: I am a member of the U.S. Armed Forces who served in the qualified hazardous duty area from December 10, 1995, through May 15, 1996. When will I be required to file my federal individual income tax return for 1995?

A-22: You must file your 1995 federal individual income tax return on or before February 25, 1997, 286 days after you left the qualified hazardous duty area. The deadline extension period consists of the sum of the following:

- (1) 180 days from the date you left the area . . . . . 180
- (2) The number of days remaining (as of the date you entered the area) to perform the required act (in your case, filing your 1995 federal individual income tax return, 1/1/96 to 4/15/96) . . . . . 106
- Total . . . . . 286

Q-23: My wife is a member of the U.S. Armed Forces serving in the qualified hazardous duty area. Can she make a timely qualified retirement contribution for 1995 to her individual retirement account (IRA) after April 15, 1996, and on or before the due date of her 1995 federal individual income tax return after applying the extension of deadline provisions?

A-23: Yes. Your wife can make a timely qualified retirement contribution for 1995 to her IRA on or before the extended deadline for filing her 1995 income tax return under the deadline extension provisions.

Q-24: My brother, who served in the U.S. Armed Forces in the qualified hazardous duty area from December 1995 through February 1996, did not make his fourth estimated tax payment for 1995. Will my brother be liable for estimated tax penalties?

A-24: No. Your brother is covered by the deadline extension provisions and

will not be liable for any penalties if he files and pays any tax due by his extended filing due date. The U.S. Armed Forces will provide your brother with instructions on how to notify the IRS of his eligibility to receive tax relief.

Q-25: My son, who is a member of the U.S. Armed Forces, was on an installment payment plan with the IRS for back taxes before he was assigned to the qualified hazardous duty area. What should be done now that he is in the qualified hazardous duty area?

A-25: The IRS office where your son was making payments should be contacted. Because your son is serving in the qualified hazardous duty area, he will not have to make payments on his past due taxes for his period of service in the qualified hazardous duty area plus 180 days. No penalties or interest will be charged during the deadline extension period.

Q-26: My son, who is a member of the U.S. Armed Forces serving in the qualified hazardous duty area, will file his federal individual income tax return for 1995 after April 15, 1996, but on or before the end of the deadline extension for filing that return. He expects to receive a refund. Will the IRS pay interest on the refund?

A-26: Yes. The IRS will pay interest from April 15, 1996, on a refund issued to your son if he files his 1995 federal individual income tax return on or before the due date of that return after applying the deadline extension provisions. The U.S. Armed Forces will provide your son with instructions on how to notify the IRS of his eligibility to receive tax relief. If his 1995 return is not timely filed on or before the due date after applying the deadline extension provisions, no interest will be paid on the refund except as provided under the normal refund rules.

Q-27: My husband and I sold our principal residence on March 1, 1994, and we have not bought a replacement residence yet. He is in the U.S. Armed Forces and reported to active duty in the qualified hazardous duty area on December 1, 1995. He is still in the qualified hazardous duty area. Do the deadline extension provisions apply to the period we have to replace our old residence to defer gain on that residence?

A-27: Yes. The deadline extension period that applies to you is the time

your husband is in the qualified hazardous duty area plus 180 days after he leaves the qualified hazardous duty area. In addition, because your husband is overseas on extended active duty (more than 90 days), you will have an additional replacement period of at least 1 year after the 180 days described above. However, that replacement period may not exceed 8 years after the date you sold your old residence plus the deadline extension period.

Q-28: Do the deadline extension provisions apply to federal tax returns other than the federal individual income tax return?

A-28: Yes. The deadline extension provisions also apply to federal estate and gift tax returns. However, the deadline extension provisions do not apply to other federal tax and information returns, such as those for corporate income tax or employment taxes.

Q-29: I am a member of the U.S. Army that was deployed to Germany to perform services as part of Operation Joint Endeavor. My permanent duty station is in the United States where my spouse resides. Do the deadline extension provisions for filing and paying our federal individual income taxes apply?

A-29: Yes. Any member of the U.S. Armed Forces who is performing services as part of Operation Joint Endeavor outside of the United States while deployed away from that individual's permanent duty station qualifies for the deadline extension for filing and paying federal individual income taxes. The deadline extension provisions also apply to that member's spouse.

Q-30: My husband, who is a member of the U.S. Armed Forces, is at his permanent duty station in Germany performing services as part of Operation Joint Endeavor. Do the deadline extension provisions apply?

A-30: No. U.S. Armed Forces personnel serving at their permanent duty station outside the qualified hazardous duty area are not entitled to the deadline extension provisions. For a more detailed discussion of the tax treatment of military personnel, see Publication 3.

Q-31: I am a Department of Defense civilian employee stationed in Hungary away from my permanent duty station in the United States. I am performing

services as part of Operation Joint Endeavor. Do the deadline extension provisions apply to me?

A-31: Yes. The deadline extension provisions apply to you. Although you are not serving in the qualified hazardous duty area, you are a Department of Defense civilian employee performing services away from your permanent duty station as part of Operation Joint Endeavor.

Q-32: My husband and I are civilian employees of defense contractors. I work in the United States and my husband temporarily works in Germany. Our jobs involve the production of equipment used by the U.S. Armed Forces for Operation Joint Endeavor. Do the deadline extension provisions apply to either of us?

A-32: No. The deadline extension provisions do not apply to civilian employees of defense contractors unless they are serving in the qualified hazardous duty area in support of the U.S. Armed Forces.

### PART 3—MISCELLANEOUS PROVISIONS

Q-33: My daughter is a member of the U.S. Armed Forces serving in the qualified hazardous duty area. She makes calls to me here in the United States. Are these calls exempt from the federal excise tax on toll telephone service?

A-33: Yes. Telephone calls that originate within the qualified hazardous duty area and that are made by members of the U.S. Armed Forces serving there are exempt from the federal excise tax on toll telephone service. If a calling card or collect call is made, a certificate of exemption must be furnished to the telephone service provider receiving payment for the call. The exemption certificate (which may be obtained from the telephone service provider) should be signed and dated by the telephone subscriber and contain the following information: the amount, time, and date of the call, the name of the person who called from the qualified hazardous duty area, a statement that the person who called was a member of the U.S. Armed Forces performing service in the qualified hazardous duty area, and the name and address of the telephone subscriber.

Q-34: If the federal excise tax has already been paid on the toll telephone

service in Q & A 33, can a refund be obtained?

A-34: Yes. If the federal excise tax has already been paid on that toll telephone service, a refund may be obtained either from the telephone service provider that collected the tax, or from the IRS by filing Form 8849, Claim for Refund of Excise Taxes.

Q-35: How will my military pay for active service in the U.S. Armed Forces in the qualified hazardous duty area be reported on my 1996 Form W-2, Wage and Tax Statement?

A-35: Military pay attributable to your active service in the qualified hazardous duty area that is excluded from gross income will not be reported on your 1996 Form W-2 in the box marked "Wages, tips, other compensation." However, military pay for such service is subject to social security and medicare taxes and will be reported on your 1996 Form W-2 in the boxes marked "Social security wages" and "Medicare wages and tips."

Q-36: I'm an officer serving in the qualified hazardous duty area. I have made monthly contributions to an individual retirement account (IRA) for 1996. In view of the military pay exclusion for my service in the

qualified hazardous duty area, I may have little or no taxable compensation for 1996 and may not be eligible to make an IRA contribution for 1996. If my taxable compensation is less than \$2000, should I withdraw the portion of my contributions that exceeds my taxable compensation?

A-36: Yes. In general, any amount contributed to your IRA that is more than the smaller of (1) your taxable compensation, or (2) \$2000, is an excess contribution and must be withdrawn to avoid a 6 percent excise tax. Once you are sure that your taxable compensation will be less than \$2000, you should withdraw the portion of your contributions that exceeds your taxable compensation. You will not be taxed on the distributed amount if you receive the distribution on or before the deadline for filing your 1996 federal individual income tax return after applying the deadline extension provisions. You may not take a deduction with respect to these distributed contributions. You must also withdraw the amount of net income attributable to the distributed contributions while they were assets of the IRA. Any of that net income is includible in your gross income for 1996. For further information, see Publication 590, Individual Retirement Arrangements (IRA).

Q-37: Assuming the same facts as question 36, how will the financial institution that distributes my 1996 IRA contributions to me report this distribution?

A-37: The financial institution will report the entire amount of the distribution (1996 distributed contributions and attributable net income) on Form 1099-R, Distribution From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. However, it should report only the amount of any net income attributable to the distributed contributions as the "Taxable amount" on Form 1099-R.

#### PART 4—INQUIRIES

Taxpayers within the United States may seek assistance by calling the IRS at 1-800-829-1040.

The IRS offices in Rome, Italy, and Bonn, Germany, can also assist you with your federal income tax questions. You may contact the Rome office by calling [39] (6) 4674-2560, or via fax at [39] (6) 4674-2223, and the Bonn office by calling [49] (228) 339-2119, or via fax at [49] (228) 339-2810.

Taxpayers with access to E-mail may direct questions relating to the tax relief discussed in this notice to oje@ccmail.irs.gov.

## Part IV. Items of General Interest

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

### Simplification of Entity Classification Rules

PS-43-95

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that would replace the existing regulations for classifying certain business organizations with an elective regime. These proposed regulations simplify the existing classification rules.

DATES: Written comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for August 21, 1996, at 10 a.m. must be submitted by August 12, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (PS-43-95), Room 5228, Internal Revenue Service, POB 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-43-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Armando Gomez, (202) 622-3050; concerning foreign organizations, Ronald M. Gootzeit or William H. Morris, (202) 622-3880; concerning submissions and the hearing, Evangelista Lee (202) 622-7190 (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 Paper-

work 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 July 12, 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 collections of information are required by §§301.6109-1(b)(2)(vi) and 301.7701-3(c). This information is required by the IRS to ensure the proper classification of business organizations and to ensure compliance with the proposed regulations. The likely respondents are businesses and other for-profit organizations, including small businesses.

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

The burden of the collection of information required by §301.6109-1 will be reflected in Forms SS-4 and W-7. The burden of the collection of information required by §301.7701-3(c) will be reflected in such form as is prescribed by the Commissioner for purposes of making the election described in this regulation.

#### *Introduction*

This document proposes to revise §§301.7701-1 through 301.7701-3 of the Procedure and Administration Regulations (26 CFR part 301) to clarify which organizations are classified as corporations automatically under the Internal Revenue Code (Code) and to provide a simple elective regime for classifying other business organizations. This document also proposes conforming changes to §§1.581-1,

1.581-2, and 1.761-1 of the Income Tax Regulations (26 CFR part 1), and to §§301.6109-1, 301.7701-4, 301.7701-6, and 301.7701-7 of the Procedure and Administration Regulations (26 CFR part 301).

#### *Background*

On April 3, 1995, Notice 95-14, relating to classification of business organizations under section 7701, was published in the Internal Revenue Bulletin (1995-1 C.B. 297). A notice of public hearing was published in the **Federal Register** on May 10, 1995 (60 FR 24813). Written comments were received and a public hearing was held on July 20, 1995. After consideration of the comments, the Treasury Department and the IRS propose to replace the existing classification regulations with a simplified regime that is elective for certain business organizations.

#### *Explanation of Provisions*

##### *I. Introduction*

Section 7701(a)(2) of the Code defines a partnership to include a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and that is not a trust or estate or a corporation. Section 7701(a)(3) defines a corporation to include associations, joint-stock companies, and insurance companies.

The existing regulations for classifying business organizations as associations (which are taxable as corporations under section 7701(a)(3)) or as partnerships under section 7701(a)(2) are based on the historical differences under local law between partnerships and corporations. However, many states have revised their statutes to provide that partnerships and other unincorporated organizations may possess characteristics that traditionally have been associated with corporations, thereby narrowing considerably the traditional distinctions between corporations and partnerships under local law. For example, some partnership statutes now provide that no partner is unconditionally liable for all of the debts of the partnership. Similarly, almost all states

have enacted statutes allowing the formation of limited liability companies. These entities provide protection from liability to all members but may qualify as partnerships for federal tax purposes under the existing regulations. See, e.g., Rev. Rul. 88-76 (1988-2 C.B. 360).

One consequence of the increased flexibility under local law in forming a partnership or other unincorporated business organization is that taxpayers generally can achieve partnership tax classification for a nonpublicly traded organization that, in all meaningful respects, is virtually indistinguishable from a corporation. To accomplish this, however, taxpayers and the IRS must expend considerable resources on classification issues. For example, since the issuance of Rev. Rul. 88-76, the IRS has issued seventeen revenue rulings analyzing individual state limited liability company statutes, and has issued several revenue procedures and numerous letter rulings relating to classification of various business organizations. Meanwhile, small business organizations may lack the resources and expertise to achieve the tax classification they want under the current classification regulations.

Reacting to the fact that publicly traded entities could easily qualify as partnerships, in 1987 Congress enacted section 7704 to require most publicly traded partnerships to be taxable as corporations. Thus, even if an organization could be classified as a partnership under the current regulations, it will nevertheless be classified as a corporation in most cases if its ownership interests are publicly traded.

In light of these developments, Treasury and the IRS believe that it is appropriate to replace the increasingly formalistic rules under the current regulations with a much simpler approach that generally is elective. To further simplify this area, the proposed regulations provide similar rules for organizations that have a single owner.

With respect to foreign organizations, Notice 95-14 (1995-1 C.B. 297) observed that, while the distinctions are similarly formalistic, the classification process under the current regulations involves even more complexities and requires greater resources than does the classification process for domestic organizations. For example, the classification of a foreign organization involves not only a review of organiza-

tional documents, but also a thorough understanding of the controlling foreign law. Accordingly, the simplified system provided under the proposed regulations extends to foreign organizations as well, with certain modifications explained below.

In light of the increased flexibility under an elective regime for the creation of organizations classified as partnerships, the Treasury Department and the IRS will continue to monitor carefully the uses of partnerships in the international context and will issue appropriate substantive guidance when partnerships are used to achieve results that are inconsistent with the policies and rules of particular Code provisions or of U.S. tax treaties.

To accomplish the changes described above, the proposed regulations would replace §§301.7701-1, 301.7701-2, and 301.7701-3 with new regulations. In addition, conforming amendments would be made to §§1.581-1, 1.581-2, 1.761-1, 301.6109-1, 301.7701-4, 301.7701-6, and 301.7701-7.

## II. General classification rules

### A. Business entities

Proposed §301.7701-1 provides an overview of the rules applicable in determining an organization's classification for federal tax purposes. The first step in the classification process is to determine whether there is a separate entity for federal tax purposes (which is a matter of federal tax law). The proposed regulations explain that certain joint undertakings that are not entities under local law may nonetheless constitute separate entities for federal tax purposes; on the other hand, not all entities formed under local law are recognized as separate entities for federal tax purposes. For example, individuals who own property as tenants in common may create a separate entity for federal tax purposes if the individuals actively carry on a trade, business, financial operation, or venture and divide the profits therefrom. On the other hand, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State. Similarly, tribes incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 477, or under section 3 of the Oklahoma Indian Welfare Act, as

amended, 25 U.S.C. 503, are not recognized as separate entities for federal tax purposes. See Rev. Rul. 94-16 (1994-1 C.B. 19); Rev. Rul. 94-65 (1994-2 C.B. 14). Also, the proposed regulations retain the rule under the current regulations that a qualified cost sharing arrangement described in §1.482-7 is not a partnership for federal tax purposes.

An organization that is recognized as a separate entity for federal tax purposes is either a trust or a business entity (unless a provision of the Code expressly provides for special treatment, such as the Real Estate Mortgage Investment Conduit (REMIC) rules, see section 860A(a)). The proposed regulations provide that trusts generally do not have associates or an objective to carry on business for profit. While these proposed regulations restate the distinction between trusts and business entities, the determination of whether an organization is classified as a trust for federal tax purposes is intended to remain the same as under current law.

Proposed §301.7701-2 specifies those business entities that automatically are classified as corporations for federal tax purposes. Any other business entity that is recognized for federal tax purposes may choose its classification under the rules of proposed §301.7701-3. Those rules provide that a business entity with at least two members can be classified as either a partnership or an association, and that a business entity with a single member can be classified as an association or can be disregarded as an entity separate from its owner.

### B. Corporations

The proposed regulations clarify that business entities that are classified as corporations for federal tax purposes include corporations denominated as such under applicable law, as well as associations, joint-stock companies, insurance companies, organizations that conduct certain banking activities, organizations wholly owned by a State, organizations that are taxable as corporations under a provision of the Code other than section 7701(a)(3), and certain organizations formed under the laws of a foreign jurisdiction or a U.S. possession, territory, or commonwealth. Each of these categories is described briefly below.

The proposed regulations define corporation to include any business entity

recognized for federal tax purposes that is organized under a Federal or State statute, or under a statute of a federally recognized Indian tribe, that describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic. Such entities include governmentally chartered corporations, as well as business corporations. See, e.g., 12 U.S.C. 21 et seq. (national banking associations), 20 U.S.C. 1087-2 (Student Loan Marketing Association), and 36 U.S.C. 1101 (private corporations established under federal law).

The proposed regulations define an association by reference to §301.7701-3. As discussed in detail below, that section permits certain business entities to choose whether to be classified as an association or as a partnership (or, if the entity has a single owner, as a non-entity).

The proposed regulations define a joint-stock company as a business entity organized under a State statute that describes or refers to the entity as a joint-stock company or joint-stock association. These entities typically have a fixed capital stock divided into shares represented by certificates transferable only upon the books of the company, manage their affairs by a board of directors and executive officers, and conduct their business in the general form and mode of procedure of a corporation. See *Burk-Waggoner Oil Assoc. v. Hopkins*, 269 U.S. 110, 113 (1925).

The proposed regulations define an insurance company as a business entity that is taxable as an insurance company under subchapter L, chapter 1 of the Code.

Under the proposed regulations, a state-chartered bank is classified as a corporation if any of the bank's deposits are insured under the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811 et seq., or a similar federal statute. This rule reflects Congress requirement that these organizations be incorporated to be eligible for federal deposit insurance, see 12 U.S.C. 1813(a)(2), and provides comparable tax treatment to state-chartered banks and national banks chartered under the National Bank Act, 12 U.S.C. 21 et seq. (which characterizes national banks as corporations, see 12 U.S.C. 24). It also is consistent with Congress historical treatment of banks as corporations, as reflected in section 581 of

the Code, which requires a bank to be incorporated for purposes of subchapter H of chapter 1. Under this rule, however, an unincorporated organization that conducts banking activities but that does not have federal deposit insurance, may, under proposed §301.7701-3, choose not to be an association for federal tax purposes; in that case, however, the organization is not a bank within the meaning of section 581, and thus is not eligible for treatment under subchapter H.

The proposed regulations also classify as corporations organizations that are recognized for federal tax purposes if they are wholly owned by a State, or any political subdivision thereof. Organizations wholly owned by a State that are not an integral part of the State must be recognized for federal tax purposes and scrutinized under section 115 (which excludes from gross income any income derived from the exercise of any essential governmental function and accruing to a State or any political subdivision thereof, or the District of Columbia). Accordingly, the proposed regulations classify any such organization as a corporation. Nevertheless, under section 115, the organization's income may not be subject to federal income tax.

The proposed regulations define corporation to include any business entity that is taxable as a corporation under another provision of the Code. For example, a business entity that is publicly traded within the meaning of section 7704 (and not within the exception in section 7704(c)), is taxable as a corporation. Similarly, a business entity that is a taxable mortgage pool under section 7701(i) is taxable as a corporation.

Finally, the proposed regulations classify as corporations certain foreign business entities (including entities organized in U.S. possessions, territories, and commonwealths) that are listed in the regulations. Notice 95-14 observed that current law does not automatically classify any foreign entity as a corporation by reference to the juridical status or designation of that entity under local law. That is, current law does not identify the foreign analogue to the incorporated state law entity that is always classified as a corporation for federal tax purposes, even though section 7701(a)(3) makes no distinction between domestic and foreign entities. Rather, since the issu-

ance of Rev. Rul. 88-8 (1988-1 C.B. 403), all foreign entities have been classified based on the characteristics set forth in §§301.7701-2 and 301.7701-3 of the current regulations. Nevertheless, under this approach, those foreign entities that are equivalent to state law corporations are virtually always classified as corporations.

To ensure the corporate classification of these foreign entities, the proposed regulations include a list of foreign business entities that always will be classified as corporations. Several commentators supported inclusion of a list of foreign business entities that either would be treated as corporations per se or that would continue to be classified under the current regulations. The Treasury Department and the IRS believe that classifying the business entities on the list as corporations in all cases is consistent with the goal of simplifying the entity classification area. The organizations listed are limited liability entities, such as the British Public Limited Company, the French Societe Anonyme, and the German Aktiengesellschaft. The Treasury Department and the IRS invite comments on the composition of the list.

Under a special grandfather rule, however, an entity described in this list will nevertheless be classified as a partnership under the proposed regulations if: (1) the entity was in existence and claimed to be a partnership on May 8, 1996, and for all prior periods, (2) that classification was relevant to any person for federal tax purposes at any time during the period that includes May 8, 1996, (3) the entity had a reasonable basis (within the meaning of section 6662) for claiming partnership classification, and (4) neither the entity nor any member has been notified in writing on or before May 8, 1996, that the classification of the entity is under examination (in which case the entity's classification will be determined in the examination).

When these regulations become final, and current §301.7701-2 (on which Rev. Rul. 88-8 is based) is superseded, Rev. Rul. 88-8 will be obsolete.

### C. Other business entities

The proposed regulations define the term partnership to include any business entity that has at least two members and that is not classified as a corporation.

Some commentators requested clarification of the effect of these elective classification rules on an organization's ability to elect to be excluded from subchapter K under section 761. The proposed regulations do not change the existing requirements for the election provided in §1.761-2. Accordingly, an organization that is classified as a partnership under the proposed regulations may elect to be excluded from subchapter K, if it qualifies under §1.761-2.

Many commentators requested guidance concerning the classification of an unincorporated business entity with a single owner. Some commentators suggested that these entities be treated as sole proprietorships, while others suggested partnership classification. Because a fundamental characteristic of a partnership is the presence of associates, an entity with a single owner cannot conduct business as a partnership. However, the proposed regulations permit a business entity with a single owner that is not required to be classified as a corporation to elect to be classified as an association or to have the organization disregarded as an entity separate from its owner (in which case the business activity is treated for federal tax purposes in the same manner as if it were conducted as a sole proprietorship, branch, or division of the organization's owner).

### III. Elective classification of certain entities

#### A. In general

Proposed §301.7701-3 sets forth rules permitting a business entity that is not required to be classified as a corporation (referred to in the regulation as an *eligible entity*) to elect its classification for federal tax purposes. An eligible entity that has at least two members may elect to be classified as an association or a partnership, and an eligible entity with a single owner may elect to be classified as an association or to be disregarded as an entity separate from its owner.

#### B. Default classification

The proposed regulations are designed to provide most eligible entities with the classification they would choose without requiring them to file an election. Thus, the proposed regula-

tions provide default classification rules that aim to match expectations. An eligible entity that wants the default classification need not file an election.

#### 1. Domestic eligible entities

Notice 95-14 suggested partnership default for domestic eligible entities. The comments supported this rule, and the proposed regulations adopt it. Thus, a newly formed domestic eligible entity will be classified as a partnership if it has two or more members unless an election is filed to classify the entity as an association; no affirmative action need be taken by the entity to ensure partnership classification. Similarly, if that entity has a single member, it will not be treated as an entity separate from its owner for federal tax purposes unless an election is filed to classify the organization as an association.

#### 2. Foreign eligible entities

Notice 95-14 suggested association default for foreign eligible entities. The Notice indicated that while domestic eligible entities typically are formed with an intent to obtain partnership classification, the preferred classification of foreign eligible entities is less predictable. For example, the Notice expressed concern that because partnership default could subject some foreign entities to compliance requirements and excise tax liability under section 1491, an entity should not be classified as a partnership inadvertently. On the other hand, as some commentators indicated, association default might not match the expectations of a foreign eligible entity.

In response to these comments, the proposed regulations provide a default rule that should match expectations more closely. The Treasury Department and IRS believe that if any of an organization's members has personal liability for the debts of the organization, the expectation is that the organization will be classified as a partnership. Accordingly, the proposed regulations provide that if one or more of an eligible entity's members have unlimited liability, the entity will be classified as a partnership if it has two or more members, or it will be disregarded as a separate entity if it has a single owner. Only if all of the entity's members have limited liability will the entity's default classification be association.

For purposes of this rule, a member of a foreign entity has limited liability only if, based solely on the controlling statute or law pursuant to which the entity is organized, the member's personal liability for the debts of or claims against the entity is specifically limited (for example, to the amount of the member's unpaid capital contribution or to the amount of a statutorily limited guarantee). If protection from personal liability is optional under the applicable law, the entity's organizational documents will determine which option applies. The determination whether there is limited liability for purposes of the default rule is intended to be simpler and more straightforward than under current law, to ensure that the default classification is readily apparent. Thus, the limited liability inquiry generally will focus solely on controlling statutes as interpreted by judicial or administrative review. As a result, a member's ability to satisfy creditors' claims would not be relevant. If taxpayers remain uncertain whether there is limited liability in a particular case, they may file an election to secure the desired classification.

#### 3. Existing eligible entities

Commentators suggested that special rules should be provided for eligible entities formed prior to the effective date of the regulations. These commentators were concerned that some existing eligible entities would be required to file classification elections immediately to prevent their classification from being changed under a default rule. Under the proposed regulations, eligible entities existing prior to the effective date of the regulations that choose to retain their current classification would not be required to file an election. Rather, those entities would retain the classification claimed under the existing regulations (except that, if an eligible entity with a single owner claimed to be a partnership under the current regulations, the entity would be disregarded as an entity separate from its owner under this default rule). A foreign entity is considered such an existing entity only if its classification immediately prior to the effective date of these regulations is relevant to any person for federal tax purposes; other foreign entities formed prior to the effective date of these regulations would be considered new entities at the

time that their federal tax classification became relevant and, therefore, would be required to file a classification election or be classified under the general default rule described above.

Furthermore, under a transition rule discussed below, the IRS generally will not challenge an existing entity's claimed classification for periods to which the existing regulations apply if the entity had a reasonable basis for the claimed classification.

## C. Elections

### 1. In general

An eligible entity that does not want the classification provided by the applicable default provision, or that wants to change its classification, may file an election to obtain the chosen classification. Some commentators suggested that the election be made with Form SS-4 (Application for Employer Identification Number); others suggested that the election be made with the filing of the entity's first tax return.

An eligible entity may elect its classification by filing an election with the appropriate service center. The proposed regulations would require that the election specify the name, address, and taxpayer identifying number of the entity, the chosen classification, whether the election results in a change in classification, and whether the entity is a domestic or foreign entity. It is anticipated that the Commissioner will prescribe a form for this purpose, in which case elections must be made on such form. The election will be effective on a date specified on the election if that date is not more than 75 days prior to the date on which the election is filed, or on the date filed if no such date is specified on the election. In addition to the original election, a business entity that makes an election shall file a copy of its election with its federal tax return for the year in which the election is effective. If the entity is not required to file a return, the Commissioner will require direct or indirect owners of the entity to include copies of the election with their federal tax returns.

Notice 95-14 suggested that all the members of an electing eligible entity would be required to consent unanimately to a classification election. Most commentators stated that, although an indication of unanimity may

be appropriate, a requirement that each member sign the election could cause significant administrative difficulties. In response to these comments, the proposed regulations require that an election be signed by: (1) each member of the entity, or (2) any officer, manager, or owner who is authorized to make the election and who represents to having such authorization under penalties of perjury.

An electing eligible entity also would be required to provide its Employer Identification Number (EIN) on the election form. To reduce taxpayers' paperwork burdens when an existing entity elects to change its classification, the proposed regulations provide that if the entity already has an EIN, it will retain it even though it elects to change its tax classification. Any organization without an EIN at the time it files its election, including an organization that had not previously been treated as a separate entity for federal tax purposes, must apply for an EIN on Form SS-4 when it files its election. If a new single-member entity elects to be disregarded as an entity separate from its owner, then the taxpayer identifying number of its owner must be displayed on the election. The proposed regulations amend §301.6109-1 to reflect these requirements.

### 2. Special rule for exempt organizations

A special rule is provided for eligible entities that have been determined to be, or claim to be, exempt from taxation under section 501(a). A substantial majority of exempt organizations (including those employee plans that qualify under section 401(a)) will not be eligible entities, either because they are properly classified as trusts for federal tax purposes or because they are not-for-profit corporations. However, for those exempt organizations that are eligible entities, the business entity classification that is consistent with the claim for exemption is association (taxable as a corporation). Accordingly, the proposed regulations provide that a claim or determination of exempt status by an eligible entity is treated as an election to be classified as an association. Such elections will take effect on the first day for which exemption is claimed or determined to apply, regardless of when the claim or

determination is made, and will remain in effect unless an election is made to change that classification after the date that either the claim is withdrawn or rejected or the determination is revoked.

### 3. Limits on changes in classification by election

Notice 95-14 requested comments on whether the regulations should restrict elections to change an entity's classification. To varying degrees, commentators supported such a restriction. Under the proposed regulations, an eligible entity that makes an election to change its classification cannot change its classification by election again during the sixty months succeeding the effective date of the election. However, an existing entity that elects to change its classification as of the effective date of the proposed regulations may elect to change again within the first sixty months following the effective date.

The sixty month limitation only applies to a change in classification by election. Thus, if a new eligible entity elects out of its default classification effective from its inception, that election is not a change in the entity's classification. Furthermore, the limitation does not apply if the organization's business actually is transferred to another entity. For example, an organization could liquidate into its parent, terminate and reform as another entity (e.g., by merger), or contribute its business to another organization without restriction.

Taxpayers are reminded that a change in classification, no matter how achieved, will have certain tax consequences that must be reported. For example, if an organization classified as an association elects to be classified as a partnership, the organization and its owners must recognize gain, if any, under the rules applicable to liquidations of corporations.

### D. Certain partnership terminations

Under section 708(b)(1)(B), a partnership is considered terminated if within a twelve month period there is a sale or exchange of fifty percent or more of the total interests in partnership capital and profits. Under this rule, a termination is treated as a liquidation of the existing partnership and the formation of a new partnership.



Accordingly, if an existing partnership terminates under section 708(b)(1)(B), the newly created entity will be classified as a partnership (but could elect to change its classification thereafter).

*IV. Effective date and transition rules*

The regulations are proposed to apply generally for periods beginning on or after the date the final regulations are published in the **Federal Register**. Sections 301.7701-1 through 301.7701-3 will continue to apply until these regulations are effective.

In addition, the IRS will not challenge the classification of an existing eligible entity, or an existing entity described in the list of foreign entities that are classified as corporations under the proposed regulations, for periods to which the current regulations apply if: (1) the entity had a reasonable basis (within the meaning of section 6662) for its claimed classification, (2) the entity claimed that same classification in all prior years, and (3) neither the entity nor any member has been notified in writing on or before May 8, 1996, that the classification of the entity is under examination (in which case the entity's classification will be determined in the examination).

*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 also has been determined that section 553(b) of the Administrative Procedure 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 these proposed regulations are adopted as final regulations, 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 Wednesday, August 21, 1996, at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue 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 August 12, 1996, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by August 12, 1996.

A period of 10 minutes will be allotted to each person for making comments.

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

*Drafting Information*

The principal authors of these regulations are Armando Gomez of the Office of Assistant Chief Counsel (Passthroughs and Special Industries) and Ronald M. Gootzeit and William H. Morris of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

*Proposed Amendments to the Regulations*

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

**PART 1—INCOME TAXES**

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

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

Par. 2. Section 1.581-1 is revised to read as follows:

*§1.581-1 Tax on banks.*

(a) For an institution to be a bank for purposes of section 581, it must be

a corporation for federal tax purposes. See §301.7701-2(b) of this chapter for the definition of corporation.

(b) This section applies to taxable years beginning on or after the date that final regulations are published in the **Federal Register**.

**§1.581-2 [Amended]**

Par. 3. In §1.581-2, paragraph (a) is amended by removing the first sentence.

Par. 4. In §1.761-1, paragraph (a) is revised to read as follows:

*§1.761-1 Terms defined.*

(a) *Partnership.* The term *partnership* means a partnership as determined under §§301.7701-1, 301.7701-2, and 301.7701-3.

\* \* \* \* \*

**PART 301—PROCEDURE AND ADMINISTRATION**

Par. 5. The authority citation for part 301 continues to read in part as follows:

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

Par. 6. Section 301.6109-1, as proposed to be amended in project number INTL-0024-94, published on June 8, 1995, at 60 FR 30214, and INTL-062-90, INTL-0032-93, INTL-52-86, and INTL-52-94, published on April 22, 1996, at 61 FR 17666, is amended as follows:

1. Paragraph (b)(2)(v) is amended by removing the language “.” at the end of the paragraph, and replacing it with the language “; and”.

2. Paragraph (b)(2)(vi) is added.

3. The text of paragraph (d)(2) is redesignated as paragraph (d)(2)(i).

4. A paragraph heading is added for newly designated paragraph (d)(2)(i).

5. Paragraph (d)(2)(ii) is added.

The revisions and additions read as follows:

*§301.6109-1 Identifying numbers.*

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vi) A foreign person that makes an election under §301.7701-3(c).

\* \* \* \* \*

(d) \* \* \*

(2) *Employer identification number*—(i) *In general.* \* \* \*

(ii) *Special rule for entities electing to change their federal tax classification under §301.7701-3(c).* Any entity that has an employer identification number and then elects under §301.7701-3(c) to change its federal tax classification will retain that employer identification number.

\* \* \* \* \*

Par. 7. Sections 301.7701-1, 301.7701-2, and 301.7701-3 are revised to read as follows:

§301.7701-1 *Classification of organizations for federal tax purposes.*

(a) *Organizations for federal tax purposes*—(1) *In general.* The Internal Revenue Code prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

(2) *Certain joint undertakings give rise to entities for federal tax purposes.* A joint venture or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. For example, a separate entity exists for federal tax purposes if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent. Nevertheless, a joint undertaking merely to share expenses does not create a separate entity for federal tax purposes. For example, if two or more persons jointly construct a ditch merely to drain surface water from their properties, they have not created a separate entity for federal tax purposes. Similarly, mere co-ownership of property that is maintained, kept in repair, and rented or leased does not constitute a separate entity for federal tax purposes. For example, if an individual owner, or tenants in common, of farm property lease it to a farmer for a cash rental or a share of the crops, they do not necessarily create a separate entity for federal tax purposes.

(3) *Certain local law entities not recognized.* An entity formed under local law is not always recognized as a separate entity for federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State. Similarly, tribes incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 477, or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 503, are not recognized as separate entities for federal tax purposes.

(4) *Single owner organizations.* Under §§301.7701-2 and 301.7701-3, certain organizations that have a single owner can choose to be recognized or disregarded as entities separate from their owners.

(b) *Classification of organizations.* The classification of organizations that are recognized as separate entities is determined under §§301.7701-2, 301.7701-3, and 301.7701-4 (unless a provision of the Internal Revenue Code provides for special treatment of that organization). For the classification of organizations as trusts, see §301.7701-4. That section provides that trusts generally do not have associates or an objective to carry on business for profit. Sections 301.7701-2 and 301.7701-3 provide rules for classifying organizations that are not classified as trusts.

(c) *Qualified cost sharing arrangements.* See §301.7701-3(e) as contained in 26 CFR Part 301 as revised as of April 1, 1996.

(d) *Domestic and foreign entities.* For purposes of this section and §§301.7701-2 and 301.7701-3, an entity is a domestic entity if it is created or organized in the United States or under the law of the United States or of any State; an entity is foreign if it is not domestic. See sections 7701(a)(4) and (a)(5).

(e) *State.* For purposes of this section and §301.7701-2, the term *State* includes the District of Columbia.

(f) *Effective date.* The rules of this section apply to periods beginning on or after the date that final regulations are published in the **Federal Register**.

§301.7701-2 *Business entities; definitions.*

(a) *Business entities.* For purposes of this section and §301.7701-3, a *busi-*

*ness entity* is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under §301.7701-3) that is not properly classified as a trust under §301.7701-4 (or otherwise subject to special treatment under the Internal Revenue Code). A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.

(b) *Corporations.* For federal tax purposes, the term *corporation* means—

(1) A business entity organized under a Federal or State statute, or under a statute of a federally recognized Indian tribe, if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic;

(2) An association (as determined under §301.7701-3);

(3) A business entity organized under a State statute, if the statute describes or refers to the entity as a joint-stock company or joint-stock association;

(4) A business entity that is taxable as an insurance company under subchapter L, chapter 1 of the Internal Revenue Code;

(5) A State-chartered business entity conducting banking activities, if any of its deposits are insured under the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811 et seq., or a similar federal statute;

(6) A business entity wholly owned by a State or any political subdivision thereof;

(7) A business entity that is taxable as a corporation under a provision of the Internal Revenue Code other than section 7701(a)(3); and

(8) Except as provided in paragraph (d) of this section, the following business entities formed in the following jurisdictions:

- American Samoa, Corporation
- Argentina, Sociedad Anonima
- Aruba, Naamloze Vennootschap
- Australia, Public Limited Company

Austria, Aktiengesellschaft  
 Barbados, Limited Company  
 Belize, Public Limited Company  
 Belgium, Societe Anonyme or Naamloze Vennootschap  
 Bolivia, Sociedad Anonima  
 Brazil, Sociedade Anonima  
 Canada, Corporation  
 Chile, Sociedad Anonima  
 People's Republic of China, Company Limited by Shares  
 Republic of China (Taiwan), Company Limited by Shares  
 Colombia, Sociedad Anonima  
 Costa Rica, Sociedad Anonima  
 Cyprus, Public Limited Company  
 Czech Republic, Akciova Spolecnost  
 Denmark, Aktieselskab  
 Ecuador, Sociedad Anonima or Compania Anonima  
 El Salvador, Sociedad Anonima  
 Egypt, Sharikat Al-Mossahamah  
 Finland, Osakeyhtio/Aktiebolag  
 France, Societe Anonyme  
 Germany, Aktiengesellschaft  
 Greece, Anonymos Etairia  
 Guam, Corporation  
 Guatemala, Sociedad Anonima  
 Guyana, Public Limited Company  
 Honduras, Sociedad Anonima  
 Hong Kong, Public Limited Company  
 Hungary, Reszvenytarsasag  
 Iceland, Hlutafelag  
 India, Public Limited Company  
 Indonesia, Perseroan Terbatas  
 Ireland, Public Limited Company  
 Israel, Public Limited Company  
 Italy, Societa per Azioni  
 Jamaica, Public Limited Company  
 Japan, Kabushiki Kaisha  
 Kazakstan, Ashyk Aktzionerlik Kogham  
 Republic of Korea, Chusik Hoesa  
 Liberia, Corporation  
 Luxembourg, Societe Anonyme  
 Malaysia, Berhad  
 Malta, Partnership *Anonyme*  
 Mexico, Sociedad Anonima  
 Morocco, Societe Anonyme  
 Netherlands, Naamloze Vennootschap  
 Netherlands Antilles, Naamloze Vennootschap

New Zealand, Limited Company  
 Nicaragua, Compania Anonima  
 Nigeria, Public Limited Company  
 Northern Mariana Islands, Corporation  
 Norway, Aksjeselskap  
 Pakistan, Public Limited Company  
 Panama, Sociedad Anonima  
 Paraguay, Sociedad Anonima  
 Peru, Sociedad Anonima  
 Philippines, Stock Corporation  
 Poland, Spolka Akcyjna  
 Portugal, Sociedade Anonima  
 Puerto Rico, Corporation  
 Romania, Societe pe Actiuni  
 Russia, Otkrytoye Aktzionerney Obshchestvo  
 Saudi Arabia, Sharikat Al-Mossahamah  
 Singapore, Public Limited Company  
 Slovak Republic, Akciova Spolocnost  
 South Africa, Public Limited Company  
 Spain, Sociedad Anonima  
 Surinam, Naamloze Vennootschap  
 Sweden, Aktiebolag  
 Switzerland, Aktiengesellschaft or Societe Anonyme  
 Thailand, Borisat Chamkad (Machachon)  
 Trinidad & Tobago, Public Limited Company  
 Turkey, Anonim Sirket  
 Tunisia, Societe Anonyme  
 Ukraine, Aktzionerne Tovaristvo Vidkritogo Tipu  
 United Kingdom, Public Limited Company  
 United States Virgin Islands, Corporation  
 Uruguay, Sociedad Anonima  
 Venezuela, Sociedad Anonima or Compania Anonima

(c) *Other business entities.* For federal tax purposes—

(1) The term *partnership* means a business entity that is not a corporation under paragraph (b) of this section and that has at least two members; and

(2) A business entity that has a single owner and is not a corporation under paragraph (b) of this section is disregarded as an entity separate from its owner.

(d) *Special rule for certain foreign business entities.* A foreign business

entity described in paragraph (b)(8) of this section is classified as a partnership if—

(1) The entity was in existence and claimed to be a partnership on May 8, 1996, and for all prior periods;

(2) That classification was relevant to any person for federal tax purposes at any time during the period that includes May 8, 1996;

(3) The entity had a reasonable basis (within the meaning of section 6662) for claiming partnership classification; and

(4) Neither the entity nor any member has been notified in writing on or before May 8, 1996, that the classification of the entity is under examination (in which case the entity's classification will be determined in the examination).

(e) *Effective date.* The rules of this section apply to periods beginning on or after the date that final regulations are published in the **Federal Register**.

*§301.7701-3 Classification of certain business entities.*

(a) *In general.* A business entity that is not classified as a corporation under §301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an *eligible entity*) can elect its classification for federal tax purposes as provided in this section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under §301.7701-2(b)(2)) or a partnership, and an eligible entity with a single member can elect to be classified as an association or to be disregarded as an entity separate from its owner. Paragraph (b) of this section provides a default classification for an eligible entity that does not make an election. Thus, elections are necessary only when an eligible entity chooses to be classified initially as other than the default classification or when an eligible entity chooses to change its classification. Paragraph (c) of this section provides rules for making express elections. Paragraph (d) of this section provides a special rule for classifying an entity created pursuant to a termination of a partnership under section 708(b)(1)(B). Paragraph (e) of this section sets forth the effective date of this section and a special rule relating to prior periods.

(b) *Classification of eligible entities that do not file an election—*(1) *Do-*

*mestic eligible entities.* Except as provided in paragraph (b)(3) of this section, unless the entity elects otherwise, a domestic eligible entity is—

(i) A partnership if it has two or more members; or

(ii) Disregarded as an entity separate from its owner if it has a single owner.

(2) *Foreign eligible entities*—(i) *In general.* Except as provided in paragraph (b)(3) of this section, unless the entity elects otherwise, a foreign eligible entity is—

(A) A partnership if it has two or more members and any member has unlimited liability;

(B) An association if no member has unlimited liability; or

(C) Disregarded as an entity separate from its owner if it has a single owner that has unlimited liability.

(ii) *Definition of unlimited liability.* For purposes of paragraph (b)(2)(i) of this section, a member of a foreign eligible entity has unlimited liability if the member has personal liability for the debts of or claims against the entity, by reason of being a member, based solely on the statute or law pursuant to which the entity is organized. A member has personal liability if creditors of the entity may seek satisfaction of debts of or claims against the entity from the member as such. A member has personal liability for purposes of this paragraph even if the member makes an agreement under which another person (whether or not a member of the entity) assumes such liability or agrees to indemnify such member for any such liability.

(3) *Existing eligible entities.* Unless the entity elects otherwise, an eligible entity in existence prior to the effective date of this section will have the same classification that the entity claimed under §§301.7701-1 through 301.7701-3 as in effect on the date prior to the effective date of this section; except that if an eligible entity with a single owner claimed to be a partnership under those regulations, the entity will be disregarded as an entity separate from its owner under this paragraph. For special rules regarding the classification of such entities for periods prior to the effective date of this section, see paragraph (e)(2) of this section. For purposes of this paragraph, a foreign eligible entity is treated as being in existence prior to the effective date of this section only if the entity's

classification is relevant to any person for federal tax purposes at any time during the period that includes the date immediately prior to the effective date of this section.

(c) *Elections*—(1) *Time and place for filing*—(i) *In general.* Except as provided in paragraphs (c)(1)(ii) and (iii) of this section, an eligible entity may elect to be classified other than as provided under paragraph (b) of this section, or to change its classification, by filing an election with the appropriate service center. Such an election shall specify the name, address, and taxpayer identifying number of the entity, the chosen classification, whether the election results in a change in classification, and whether the entity is a domestic or foreign entity. The election will be effective on the date specified on the election if that date is not more than 75 days prior to the date on which the election is filed, or on the date filed if no such date is specified on the election. If the Commissioner prescribes a form for this purpose, the election shall be made on such form. See §301.6109-1 for rules on applying for and displaying Employer Identification Numbers.

(ii) *Limitation.* If an eligible entity makes an election under this paragraph (c) to change its classification (other than an election made by an existing entity to change its classification as of the effective date of this section), it cannot change its classification by election again during the sixty months succeeding the effective date of the election.

(iii) *Special rule for exempt organizations.* An eligible entity that has been determined to be, or claims to be, exempt from taxation under section 501(a) is treated as having made an election under this section to be classified as an association. Such election will be effective as of the first date for which exemption is claimed or determined to apply, regardless of when the claim or determination is made, and will remain in effect unless an election is made under paragraph (c)(1)(i) of this section after the date the claim for exempt status is withdrawn or rejected or the date the determination of exempt status is revoked.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (c)(1):

*Example 1.* On July 1, 1998, X, a domestic corporation, purchases a 10% interest in Y, an

eligible entity formed under Country A law in 1990. The entity's classification was not relevant to any person for federal tax purposes prior to X's acquisition of an interest in Y. Thus, Y is not considered to be in existence on the effective date of this section for purposes of paragraph (b)(3) of this section. Under the applicable Country A statute, no member of Y has unlimited liability as defined in paragraph (b)(2)(ii) of this section. Accordingly, Y is classified as an association under paragraph (b)(2)(i)(B) of this section unless it elects under paragraph (c) of this section to be classified as a partnership. To be classified as a partnership as of July 1, 1998, Y must file the election by September 13, 1998. See paragraph (c)(1)(i) of this section. Because an election cannot be effective more than 75 days prior to the date on which it is filed, if Y files its election after September 13, 1998, it will be classified as an association from July 1, 1998, until the effective date of the election. In that case, it could not change its classification by election under paragraph (c) of this section during the sixty months succeeding the effective date of the election.

*Example 2.* (i) Z is an eligible entity formed under Country B law and is in existence on the effective date of this section within the meaning of paragraph (b)(3) of this section. Prior to the effective date of this section, Z claimed to be classified as an association. Unless Z files an election under paragraph (c) of this section, it will continue to be classified as an association under paragraph (b)(3) of this section.

(ii) Z files an election under paragraph (c) of this section to be classified as a partnership, effective as of the effective date of this section. Z can file an election to be classified as an association at any time thereafter, but then would not be permitted to change its classification by election during the sixty months succeeding the effective date of that subsequent election.

(2) *Authorized signatures.* An election made under paragraph (c)(1)(i) of this section must be signed by—

(i) Each member of the electing entity; or

(ii) Any officer, manager, or member of the electing entity who is authorized to make the election and who represents to having such authorization under penalties of perjury.

(3) *Further notification of elections.* An eligible entity required to file a federal tax return for the taxable year for which an election is made under paragraph (c)(1)(i) of this section shall attach a copy of the form filed in accordance with paragraph (c)(1)(i) of this section to its federal tax return for that year. If the entity is not required to file a return for that year, the Commissioner will require that a copy of such form be attached to the federal income tax return of any direct or indirect owner of the entity for the taxable year of the owner that includes the date on which the election was effective.

(d) *Special rule for certain partnership terminations.* When a partnership terminates by operation of section 708(b)(1)(B) (on the sale or exchange of fifty percent or more of the total interests in partnership capital or profits within a twelve month period), the resulting entity created by such termination is a partnership.

(e) *Effective date*—(1) *In general.* The rules of this section apply to periods beginning on or after the date that final regulations are published in the **Federal Register**.

(2) *Prior treatment of existing entities.* In the case of a business entity that is not described in §301.7701-2(b)(1), (3), (4), (5), (6), or (7), and that is in existence prior to the effective date of this section, the entity's claimed classification will be respected for all periods prior to the effective date of this section if—

(i) The entity had a reasonable basis (within the meaning of section 6662) for its claimed classification;

(ii) The entity claimed that same classification for all prior periods; and

(iii) Neither the entity nor any member has been notified in writing on or before May 8, 1996, that the classification of the entity is under examination (in which case the entity's classification will be determined in the examination).

Par. 8. Section 301.7701-4 is amended as follows:

1. The last sentence of paragraphs (b), (c)(1), (c)(2) *Example 1*, and (c)(2) *Example 3* are revised.

2. Paragraph (f) is added.

The revisions and additions read as follows:

§301.7701-4 *Trusts.*

\* \* \* \* \*

(b) *Business trusts.* \* \* \* The fact that any organization is technically cast in the trust form, by conveying title to property to trustees for the benefit of persons designated as beneficiaries, will not change the real character of the organization if the organization is more properly classified as a business entity under §301.7701-2.

(c) \* \* \* (1) \* \* \* An investment trust with multiple classes of ownership interests ordinarily will be classified as a business entity under §301.7701-2; however, an investment trust with

multiple classes of ownership interests, in which there is no power under the trust agreement to vary the investment of the certificate holders, will be classified as a trust if the trust is formed to facilitate direct investment in the assets of the trust and the existence of multiple classes of ownership interests is incidental to that purpose.

(2) \* \* \*

*Example 1.* \* \* \* As a consequence, the existence of multiple classes of trust ownership is not incidental to any purpose of the trust to facilitate direct investment, and, accordingly, the trust is classified as a business entity under §301.7701-2.

\* \* \* \* \*

*Example 3.* \* \* \* Accordingly, the trust is classified as a business entity under §301.7701-2.

\* \* \* \* \*

(f) *Effective date.* The rules of this section generally apply to taxable years beginning after December 31, 1960. Paragraph (e)(5) of this section contains rules of applicability for paragraph (e) of this section. In addition, the last sentences of paragraphs (b), (c)(1), and (c)(2) *Example 1* and *Example 3* of this section apply to taxable years beginning on or after the date that final regulations are published in the **Federal Register**.

Par. 9. Section 301.7701-6 is revised to read as follows:

§301.7701-6 *Definitions; person, fiduciary.*

(a) *Person.* The term *person* includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group. The term also includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(b) *Fiduciary*—(1) *In general.* Fiduciary is a term that applies to persons who occupy positions of peculiar confidence toward others, such as trustees, executors, and administrators. A fiduciary is a person who holds in trust an estate to which another has a beneficial interest, or receives and controls income of another, as in the case of receivers. A committee or

guardian of the property of an incompetent person is a fiduciary.

(2) *Fiduciary distinguished from agent.* There may be a fiduciary relationship between an agent and a principal, but the word agent does not denote a fiduciary. An agent having entire charge of property, with authority to effect and execute leases with tenants entirely on his own responsibility and without consulting his principal, merely turning over the net profits from the property periodically to his principal by virtue of authority conferred upon him by a power of attorney, is not a fiduciary within the meaning of the Internal Revenue Code. In cases when no legal trust has been created in the estate controlled by the agent and attorney, the liability to make a return rests with the principal.

(c) *Effective date.* The rules of this section are effective on the date that final regulations are published in the **Federal Register**.

§301.7701-7 [Removed]

Par. 10. Section 301.7701-7 is removed.

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

(Filed by the Office of the Federal Register on May 9, 1996, 8:45 a.m., and published in the issue of the Federal Register for May 13, 1996, 61 F.R. 21989)

Foundations Status of Certain Organizations

Announcement 96-56

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

*Former Public Charities.* The following organizations (which have been treated as organizations that are not

private foundations described in section 509(a) of the Code) are now classified as private foundations:

- A Family Friend Inc., Hackensack, NJ
- Affordable Housing Ventures for South Arkansas Inc., Hampton, AR
- Alpha Omega Social Action and Scholarship Foundation, Washington, DC
- Alternative AG Inc., Sandpoint, ID
- American Coalition for the Assistance and Mentor Programs Inc., Rockville, MD
- American Danz Theatre, Chicago, IL
- American Mutiple Sclerosis Association, Wilmington, DE
- Angola Booster Club Inc., Angola, IN
- Apostolic Social Services, Inc., Indianapolis, IN
- Apple Developmental Daycare II Inc., Van Buren, AR
- A Quiet Place, Inc., Altamonte Springs, FL
- Archbishop Fulton J. Sheen Foundation, Troy, MI
- Arts Council of Northern Beaufort County, Beaufort, SC
- Augusta Christian Maternity Home Inc., Augusta, GA
- Baltimore Substance Abuse Systems Inc., Baltimore, MD
- Barbara Schmitz Grasser Memorial Scholarship Fdn Inc., Wisconsin Rapids, WI
- Beaver Lake Animal Shelter, Inc., Avoca, AR
- Believers Bible Chapel of Tampa Florida, Inc., Odessa, FL
- Beloit Positive Youth Development Inc., Beloit, WI
- Best Wisconsin Foundation Inc., Mequon, WI
- Big Horn Mountain Foundation, Alexandria, VA
- Bioreview Foundation Inc., Rockville, MD
- BJ Camrah Industries, Inc., Norcross, GA
- Bucks County Heroes Scholarship Fund, Newtown, PA
- Cape Fear Inner City Outings Inc., Wilmington, NC
- Cap Ryan Trust, Manhattan, KS
- Caseville Community Arts Council, Caseville, MI
- Central Missionary Fellowship Inc., Vienna, VA
- Charlotte Philharmonic Society, Charlotte, NC
- Cherry Tree Players Inc., Lynchburg, VA
- Chesapeake Ballet Ensemble Inc., North Beach, MD
- Children First of Cleveland, Cleveland Heights, OH
- Childrens Center of Dalton Whitefield Inc., Dalton, GA
- Christ Life Ministries, Inc., Tequesta, FL
- Citizens for Appropriate River Environs, Minneapolis, MN
- Childrens Guild of Georgia, Aragon, GA
- Citywide Public Housing Residents Council, Milwaukee, WI
- CLC, Inc., Clarkston, MI
- Coalition for Academic Excellence, Birmingham, AL
- Consortium of Doctors Ltd, Savannah, GA
- Coventry Neighbors, Inc., Cleveland Heights, OH
- Cross Road Prison Ministries Inc., Greensboro, NC
- Cuso International Development Foundation, Memphis, TN
- Daybreak, Inc., Owensboro, KY
- Disability Law Foundation Inc., Birmingham, AL
- Divine Law Society Inc., East Point, GA
- Dixie Gray Band, Mexico, MO
- Dunwoody High School Band Booster Club Inc., Dunwoody, GA
- Earth Day Chicago, Chicago, IL
- Elm Lifelines Inc., Medford, NJ
- Elrose Health Services, Inc., Detroit, MI
- Environment Unlimited Inc., Minneapolis, MN
- Essence/Foundation Inc., Deerfield, FL
- Exchange Club Center for the Prevention of Child Abuse of Mobile County Alabama Inc., Mobile, AL
- Eye Center Foundation, Inc., Jupiter, FL
- Fair Housing Center of Washtenaw County, Inc., Ann Arbor, MI
- Faith Child Care & Development Center, Statesville, NC
- Flights for Life St. Louis, St. Louis, MO
- Families Helping Families of Greater New Orleans, Metairie, LA
- Fancy Farm Elderly Housing Corp. II, Mayfield, KY
- Fire Escape Ministries Inc., Crosby, MN
- Frances Grant Triebel Memorial Sholarship Trust, Rockford, IL
- Friends for Al Lopez Inc., Tampa, FL
- Friends of Guy Mason Recreation Center Inc., Washington, DC
- Friends of Little River Inc., Fort Payne, AL
- Friends of the Birmingham Museum of Art, Birmingham, AL
- Friends of the Parks, Coshocton, OH
- Furthering Independence for the Disabled, Ann Arbor, MI
- Gordon Lee Memorial High School Alumni Association Inc., Chickamauga, GA
- Haitian American Resource Center, Inc., Newark, NJ
- Headwaters Landtrust, Hiram, OH
- Healthshare Peru, St. Paul, MN
- Heartland Equine Therapeutics Riding Academy Inc., Omaha, NE
- Heritage Academy Hispanic Association Inc., Metairie, LA
- Historic South Park, Inc., Dayton, OH
- Hogares Y Vecinos en Accion Cooperativa de Terren O, Philadelphia, PA
- Homeless Helpers, Arlington, VA
- Hometies, Lancaster, PA
- Huang Hsing Foundation, Inc., Silver Spring, MD
- Hunger Organization Supported by Tenns of Tennessee Inc., Nashville, TN
- Ida Culver House of the Seattle Education Auxiliary, Seattle, WA
- Institute for Economics as a Second Language, Richmond Hts., OH
- Institute for Non-Formal Education in Southern Africa, Potomac, MD
- Inter-American Music Festival of Florida, Inc., Miami, FL
- Inter City Coalition, Chicago, IL
- International Association of Christians in Business, Palatine, IL
- International Society of Global Health Policy, Washington, DC
- J. Jireh Ministries, Columbus, OH
- James E Holmes Middle School Parent Teacher Student Org. of Eden NC, Eden, NC
- Jesus Workshop, Springfield, MO

Johnson Memorial Day Care Center, Asheville, NC

Knox County Task Force Against Dometic Violence, Knoxville, TN

Kids Involved Decide to Save the Earth, Stonington, IL

Kings Men Inc., Atlantic City, NJ

Labor Safe Harbor for Workers Corp., San Juan, PR

Lafayette Cadets Drum and Bugle Corps., LaGrange, GA

Lao Veterans Assoc., Richfield, MN

LBF Management Research Inc., Huntingdon Valley, PA

Lehigh Valley Eduational Cooperative, Bethlehem, PA

Long Island Aclo Realty Property Holding Corp., Bethpage, NY

Mahomet Helping Hands, Champaign, IL

McComb City-Wide Housing Authority Resident Council, Inc., McComb, MS

Mercy Douglass Housing Phase III, Philadelphia, PA

Metro East Church Based Citizens Organization, East St. Louis, MO

Michael Embrey McGuire Memorial Scholarship Fund, Kingsport, TN

Michael Wilcher Foundation for Youth Achievement, Mitchellville, MD

Mountain Classic Dance Company Inc., Young Harris, GA

Maryland Entomological Society, Columbia, MD

McDuffie Care Inc., Thomson, GA

Medication Manager, The, Winston Salem, NC

Millvale Resident & Community Council, Cincinnati, OH

Mobile Museum of Polk County, Inc., The, Lakeland, FL

Mothers — And Men — of Bellbrook, Billbrook, OH

Mount Rest Home Foundation, Knoxville, TN

Nash County Foundation to Reduce the Use of Drugs, Nashville, TN

National African American Childrens Theatre League, The, Philadelphia, PA

National Alliance for the Mentally Ill Shelby Ala Chapter Inc., The, Calera, AL

National Association of Professional Baseball Leagues Sports Administration Grant Program, St. Petersburg, FL

Neighbors Network, Atlanta, GA

New Horizons Horse Center, Evensville, TN

New Horizons of Eau Claire County Inc., Eau Claire, WI

New Life World Ministry, Kentwood, LA

Newspaper in Education Inc., Manitowoc, WI

New World Soccer Inc., Germantown, TN

Nigerians Who Care, Washington, DC

Nobles-Rock Way-Wo-Men Against Violence-Inc., Luverne, MN

Northeast Bradford Area Little League Wyalusing, PA

Northeast Piedmont Chorale, Inc., Louisburg, NC

Off the Streets, Franklin, TN

Open Hearth Inc., Limerick, PA

Operation Heroes Welcome, Inc., Metairie, LA

ORSO, Inc., Columbus, OH

Our Lords Work, Inc., Roswell, GA

Parents Professional Advocating for Children With Exceptionalities, Lake Worth, FL

Pawtucket Lions Club Memorial Foundation Inc., Pawtucket, RI

Pennsylvania Public Interest Research Group Education Fund, Inc., Philadelphia, PA

People-Plant Earth on Protecting a Lasting Environment, Forked River, NJ

Peoples Community Outreach Services Corp., Detroit, MI

Peoria Area Literacy Coalition, Peoria, IL

Perry School Community Services Center Inc., Washington, DC

Piedmont Regional Genealogy Society, Winder, GA

Playscape for the Park, Groose Point Park, MI

Post 15 Legion Baseball Parents, Sioux Falls, SD

Power to the Struggle Outreach Ministry, Norfolk, VA

Programs for Achieving Total Health, Inc., Princeton, NJ

Radomaine, Livonia, MI

Ragalo Medical and Educational Foundation, Gramercy, LA

Raleigh Bicentennial Foundation, Raleigh, NC

Reaching Out With Love Ministeries, Inc., Marietta, GA

Recovery Support Services Inc., Nashville, TN

Red Balloon Just A S K, Edinboro, PA

Redeeming Grace Ministries, Inc., Wakinsonville, GA

Red Feather Family Services Inc., Winnebago, NE

Rhytmyme, Inc., N Ft. Myers, FL

Rhyne Park Girls Softball Association Inc., Smyrna, GA

Rick Harvey Ministries Inc., Greenbriar, AR

Salamander Company Inc., Minneapolis, MN

Senior Citizens Association of Bonita Springs, Bonita Springs, FL

Servants Hands Inc., Sherwood, AR

Shalem Home Inc., Smithville, MO

Shelter the World Inc., Silver Spring, MD

Siouxland Housing Development Corporation Inc., Sioux City, MO

Smith Mountain Arts Council, Wirtz, VA

Sonseekers Puppet Ministry, Inc., Salem, WV

South Dakota and Upper Midwest Black History Museum, Yankton, SD

Southeastern Wake Adult Day Center, Raleigh, NC

Southern Africa Refugee Fund Inc., Atlanta, GA

Southern Kentucky Youth Basketball Leagues, Inc., Bowling Green, KY

Southwest Community Health Center, Chicago, IL

Spiritual Vision, Inc., Tallahassee, FL

Stage Players, Cary, NC

St. Alphonsus Alumni Association, Dearborn, MI

St Francis Veterans Memorial Committee Inc., St Francis, WI

Stone Castle Restoration Committee, Bristol, TN

Sunshine Child Care Center, Inc., Lafayette, IN

Support for Adult Survivors, Lake Leelanau, MI

Teen Scenes Inc., Lithonia, GA

Tennessee Center for Justice and Education Inc., Knoxville, TN

Tennessee Coalition for the Homeless Inc., Nashville, TN

Tennessee Foreign Language Institute Endowment Fund, Nashville, TN

Toombs County Project Hope Inc., Vidalia, GA

Tourism Institute Ltd., Roswell, GA  
Tuesdays Music Live Inc., Augusta,  
GA

Tuscarora Tribe of the Red Hill  
Community of Robison County  
Inc., Maxton, NC

21st Century Commission on African  
American Males, Washington, DC

U M O J A Care Inc., Chicago, IL  
United African Arts & Education  
Fund, Inglewood, CA

Unity Baptist Adult Day Care Center,  
Lowndesboro, AL

University and John Hope Homes  
Tenants Association, Atlanta, GA

Urban Forest Council of Washington  
DC, Washington, DC

Virginia Blood Services Foundation,  
Richmond, VA

Virginia Lawyers Study Group, Inc.,  
McLean, VA

Vito Battista Atelier Foundation Inc.,  
Brooklyn, NY

Warren County Fine Arts Council,  
Clayton, MO

White Earth Bay Development Corp.,  
Tioga, ND

William C Skaggs Senior Citizens  
Facilities, Chatham, IL

Willing Women Workers, St Paul,  
MN

Wisconsin Council of the American  
Academy of Clinical Applied  
Spinal Biomechanical Engineering,  
Waukesha, WI

Wisconsin Agri-Business Foundation  
Inc., Madison, WI

Word Only Ministries, Inc., The,  
Raleigh, NC

Youth Reach Inc., Minneapolis, MN

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.



## Announcement of the Disbarment, Suspension, or Consent to Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under 31 Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents and enrolled actuaries are prohibited in any Internal

Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attor-

ney, certified public accountant, enrolled agent or enrolled actuary and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Behrens, William	Kenosha, WI	Enrolled Agent	March 6, 1996 to May 5, 1996
Warter, J. Christopher	South Bend, IN	Attorney	Indefinite from March 8, 1996
Leckie, Jerry B.	Macon, GA	Enrolled Agent	March 9, 1996 to March 8, 1999
Retzlaff, Gene	Hortonville, WI	Enrolled Agent	March 18, 1996 to July 17, 1996
Cahill, Donal	Stratford, CT	Attorney	April 4, 1996 to April 3, 1997
Guidera, George C.	Straford, CT	Attorney	April 11, 1996 to October 10, 1996
Kirk, Gregg T.	Dallas, TX	CPA	Indefinite from May 1, 1996
Brock, Guy Charles	Spokane, WA	CPA	Indefinite from May 1, 1996
Mathews, Thomas	Cincinnati, OH	CPA	May 1, 1996 to August 31, 1996
Farnsworth Jr., Harold	Starke, FL	CPA	May 1, 1996 to April 30, 1998
King, John C.	Wichita, KS	Attorney	May 1, 1996 to August 31, 1996

## Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under title 31 of the Code of Federal Regulations, section 10.76, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years, from the date the expedited proceeding is instituted, (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause; or (2) has been convicted of any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal

Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled

agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions of the applicable regulations:

Name	Address	Designation	Date of Suspension
Noske, Joan M.	Richmond, MN	CPA	Indefinite from March 1, 1996
Wahl, Roger W.	Martinez, GA	CPA	Indefinite from March 1, 1996
Stojanov, Dragan	Detroit, MI	Attorney	Indefinite from March 13, 1996
Gay, Randall D.	Honolulu, HI	CPA	Indefinite from March 13, 1996
Sheffey, Ralph	LaCrosse, WI	Attorney	Indefinite from March 13, 1996
Doyle, Robert	Sacramento, CA	CPA	Indefinite from March 19, 1996
Singer, Michael G.	Minnetonka, MN	Attorney	Indefinite from March 19, 1996
Mohme, Robert H.	St. Louis, MO	Attorney	Indefinite from March 20, 1996
Vogelei, George Mac	Novato, CA	Attorney	Indefinite from March 20, 1996
Gaskins, Oscar N.	Cherry Hill, NJ	Attorney	Indefinite from March 26, 1996
Gawel, Michael S.	Niagara Falls, NY	Attorney	Indefinite from March 29, 1996

## 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 List<sup>1</sup>

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### Announcements:

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8657, 1996–14 I.R.B. 4  
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8662, 1996–23 I.R.B. 5  
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<sup>1</sup>A 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.

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#### 91-26

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Modified by

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#### 78-294

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8665, 1996-21 I.R.B. 4

#### 80-80

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

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<sup>1</sup>A 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.