

Internal Revenue bulletin

Bulletin No. 1998-4
January 26, 1998

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. 98-6, page 4.
LIFO; price indexes; department stores. The November 1997 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, November 30, 1997.

EMPLOYEE PLANS

REG-209463-82, page 27.
This proposed regulation contains amendments to EE-113-82, 1987-2 C.B. 881, under section 401(a)(9) of the Code that makes changes to the rules that apply if a trust is named as a beneficiary of an employee's retirement benefit under a qualified plan.

Rev. Proc. 98-14, page 22.
Determination letters; Small Business Job Protection Act. This procedure opens the determination letter program for qualified plans that seek to comply with changes in the qualification requirements made by the Uruguay Round Agreements Act and the Taxpayer Relief Act of 1997, as well as those changes in the qualification requirements made by the Small Business Job Protection Act of 1996 that are effective before the first day of the first plan year beginning on or after January 1, 1999.

Notice 98-9, page 8.
Weighted average interest rate update. Guidelines are set forth for determining for January 1998, the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code as amended by the Omnibus Budget Reconciliation Act of 1987 and by the Uruguay Round Agreements Act (GATT).

EXEMPT ORGANIZATIONS

Announcement 98-4, page 31.
A list is given of organizations now classified as private foundations.

Finding Lists begin on page 34.

ADMINISTRATIVE

Notice 98-8, page 6.
Eligible deferred compensation plans under section 457. This notice provides guidance relating to the new statutory requirements applicable to eligible deferred compensation plans of state and local government and tax-exempt employers under section 457 of the Code after the Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997.

Rev. Proc. 98-11, page 9.
Insurance companies; loss reserves; discounting unpaid losses. The loss payment patterns and discount factors are set forth for the 1997 accident year, which is a determination year. These factors will be used for computing discounted unpaid losses under section 846 of the Code.

Rev. Proc. 98-12, page 18.
Insurance companies; discounting estimated salvage recoverable. The salvage discount factors are set forth for the 1997 accident year. These factors will be used for computing estimated salvage recoverable under section 832 of the Code.

Rev. Proc. 98-13, page 21.
Section 646 election. This procedure provides the procedures and requirements for making the section 646 election to treat certain revocable trusts as part of an estate.

Rev. Proc. 98-15, page 25.
Underpayment interest; interest expense deduction; estates. Procedures are provided for estates of decedents dying before January 1, 1998, to elect, under section 503(d)(2) of the Taxpayer Relief Act of 1997, to reduce the rate of interest on estate taxes deferred under section 6166 of the Code and forgo the deduction for interest paid on the deferred estate taxes under sections 2053 and 163(h) of the Code.



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 prod-

ucts 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 proce-

dures 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 a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semiannual period, respectively.

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

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

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

Section 163.—Interest

26 CFR 1.163-1: Interest deduction in general.

What procedures apply for estates of decedents dying before January 1, 1998, to make an election under § 503(d)(2) of the Taxpayer Relief Act of 1997 to reduce the rate of interest on estate taxes deferred under § 6166 of the Code and forgo the deduction for interest paid on the deferred estate taxes under §§ 2053 and 163(h). See Rev. Proc. 98-15, page 25.

Section 401.—Qualified Pension, Profit-Sharing and Stock Bonus Plans

26 CFR 1.401(b)-1: Certain retroactive changes in plans.

A remedial amendment period for changes in plan qualification requirements made by the Taxpayer Relief Act of 1997 is provided. See Rev. Proc. 98-14, page 22.

Section 472.—Last-in, First-out Inventories

26 CFR 1.472-1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The November 1997 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, November 30, 1997.

Rev. Rul. 98-6

The following Department Store Inventory Price Indexes for November 1997 were issued by the Bureau of Labor Statistics on December 16, 1997. The indexes are accepted by the Internal Revenue Service, under § 1.472-1(k) of the Income Tax Regulations and Rev. Proc.

86-46, 1986-2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, November 30, 1997.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups – soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, foods, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS (January 1941 = 100, unless otherwise noted)

Groups	Nov. 1996	Nov. 1997	Percent Change from Nov. 1996 to Nov. 1997 ¹
1. Piece Goods	55.9	524.6	-5.6
2. Domestic and Draperie	634.7	628.2	-1.0
3. Women's and Children's Shoes	656.1	661.7	0.9
4. Men's Shoes	903.7	906.9	0.4
5. Infants' Wear	614.8	618.2	0.6
6. Women's Underwear	535.4	552.9	3.3
7. Women's Hosiery	287.4	298.8	4.0
8. Women's and Girls' Accessories	562.5	543.7	-3.3
9. Women's Outerwear and Girls' Wear	415.9	428.4	3.0
10. Men's Clothing	633.0	621.2	-1.9
11. Men's Furnishings	591.5	604.0	2.1
12. Boys' Clothing and Furnishings	495.1	513.1	3.6
13. Jewelry	1020.6	978.9	-4.1
14. Notions	740.7	807.7	9.0
15. Toilet Articles and Drugs	903.4	917.8	1.6
16. Furniture and Bedding	667.8	665.8	-0.3
17. Floor Coverings	585.6	580.1	-0.9
18. Housewares	804.5	811.7	0.9
19. Major Appliances	244.2	241.0	-1.3
20. Radio and Television-	78.1	74.2	-5.0
21. Recreation and Education ²	111.3	108.3	-2.7
22. Home Improvements ²	130.6	133.2	2.0
23. Auto Accessories ²	107.1	107.9	0.7
Groups 1 - 15: Soft Goods	602.1	606.5	0.7

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
 INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS—Continued
 (January 1941 = 100, unless otherwise noted)

Groups	Nov. 1996	Nov. 1997	Percent Change from Nov. 1996 to Nov. 1997 ¹
Groups 16 – 20: Durable Goods	466.5	462.6	–0.8
Groups 21 – 23: Misc. Goods ²	113.0	111.4	–1.4
Store Total ³	555.1	555.9	0.1

¹Absence of a minus sign before percentage change in this column signifies price increase.

²Indexes on a January 1986=100 base.

³The store total index covers all departments, including some not listed separately, except for the following: candy, foods, liquor, tobacco, and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Stan Michaels of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Michaels on (202) 622-4970 (not a toll-free call).

Section 646.—Election To Treat Certain Revocable Trusts as Part of an Estate

What are the procedures and requirements for making the § 646 election to treat certain revocable trusts as part of an estate? See Rev. Proc. 98–13, page 21.

Section 832.—Insurance Company Taxable Income

26 CFR 1.832–4: Gross income.

The salvage discount factors are set forth for the 1997 accident year. These factors will be used for

computing estimated salvage recoverable for purposes of section 832 of the Code. See Rev. Proc. 98–12, page 18.

Section 846.—Discounted Unpaid Losses Defined

26 CFR 1.846–1: Application of discount factors.

The loss payment patterns and discount factors are set forth for the 1997 accident year, which is a determination year. These factors will be used for computing discounted unpaid losses under section 846 of the Code. See Rev. Proc. 98–11, page 9.

The salvage discount factors are set forth for the 1997 accident year. These factors will be used for computing estimated salvage recoverable for purposes of section 832. See Rev. Proc. 98–12, page 18.

Section 2053.—Expenses, Indebtedness, and Taxes

26 CFR 20.2053–1: Expenses, indebtedness, and taxes in general.

What procedures apply for estates of decedents dying before January 1, 1998, to make an election

under § 503(d)(2) of the Taxpayer Relief Act of 1997 to reduce the rate of interest on estate taxes deferred under § 6166 of the Code and forgo the deduction for interest paid on the deferred estate taxes under §§ 2053 and 163(h). See Rev. Proc. 98–15, page 25.

Section 6166.—Extension of Time for Payment of Estate Tax Where Estate Consists Largely of Interest in Closely Held Business

26 CFR 20.6166–1: Election of alternate extension of time for payment of estate tax where estate consists largely of interest in closely held business.

What procedures apply for estates of decedents dying before January 1, 1998, to make an election under § 503(d)(2) of the Taxpayer Relief Act of 1997 to reduce the rate of interest on estate taxes deferred under § 6166 of the Code and forgo the deduction for interest paid on the deferred estate taxes under §§ 2053 and 163(h). See Rev. Proc. 98–15, page 25.

Part III. Administrative, Procedural, and Miscellaneous

Eligible Deferred Compensation Plans Under Section 457

Notice 98-8

I. PURPOSE

This notice provides guidance relating to the requirements applicable to eligible deferred compensation plans described in § 457(b) of the Internal Revenue Code (“§ 457(b) plans”). Section 457 was amended by §§ 1447 and 1448 of the Small Business Job Protection Act of 1996, Pub. L. 104-188 (“SBJPA”), and more recently by § 1071 of the Taxpayer Relief Act of 1997, Pub. L. 105-34 (“TRA ’97”). Unless indicated otherwise, references to § 457 in this notice refer to § 457 as amended by the SBJPA and TRA ’97.

Specifically, this notice provides guidance on—

- in-service distributions from a § 457(b) plan if the total amount payable to the participant does not exceed \$5,000;
- an additional election to defer commencement of distributions from a § 457(b) plan;
- cost of living adjustments to the \$7,500 limitation on maximum deferrals under a § 457(b) plan; and
- the trust requirements applicable to state and local government employers maintaining a § 457(b) plan, including the requirements for custodial accounts and annuity contracts.

II. BACKGROUND

Section 457 provides rules for nonqualified deferred compensation plans established by state and local governments or tax-exempt organizations. These employers can establish either § 457(b) plans or ineligible plans under § 457(f) of the Internal Revenue Code (“Code”). Section 457 was amended by §§ 1447 and 1448 of the SBJPA, as well as by § 1071 of TRA ’97. These amendments and the guidance provided by this notice relate only to § 457(b) plans.

Section 1447 of the SBJPA amended § 457(e)(9) of the Code to permit, under certain conditions, in-service distributions from a § 457(b) plan if the total amount

payable to the participant does not exceed \$3,500. Under § 1071 of TRA ’97, this \$3,500 amount was increased to \$5,000. Section 1447 of the SBJPA also permits an additional election by a participant to defer commencement of distributions under a § 457(b) plan. Further, § 1447 of the SBJPA provides for the \$7,500 maximum deferral amount, under §§ 457(b)(2) and 457(c)(1), to be adjusted (in \$500 increments) to reflect increases in the cost of living.

Section 1448 of the SBJPA added new § 457(g) of the Code, which requires that § 457(b) plans maintained by state or local government employers hold all plan assets and income in trust, or in custodial accounts or annuity contracts (described in § 401(f) of the Code), for the exclusive benefit of their participants and beneficiaries.

III. IN-SERVICE DISTRIBUTIONS OF SMALLER AMOUNTS

Section 457(e)(9)(A), as amended by the SBJPA and TRA ’97, permits certain in-service distributions from a § 457(b) plan if the total amount payable to the participant does not exceed a specified dollar amount. This specified dollar amount was changed from \$3,500 to \$5,000 effective for plan years beginning after August 5, 1997. Each participant can be given only one such in-service distribution from the plan. This in-service distribution is available only if no amount has been deferred under the § 457(b) plan for the participant during the 2-year period ending on the date of the distribution.

Under this provision, for plan years beginning after August 5, 1997, a § 457(b) plan may provide for the total amount payable to a participant with a balance of \$5,000 or less to be distributed to the participant if the participant so elects. Alternatively, the plan may provide for the total amount payable to a participant with a balance of \$5,000 or less to be distributed automatically to the participant. A § 457(b) plan is permitted to substitute a specified dollar amount that is less than \$5,000 under either of these alternatives. In addition, these two alternatives can be combined; for example, a plan could provide for automatic cashout for balances up to \$500 and allow participants to elect

a cashout for balances above \$500 but not above \$5,000. A § 457(b) plan is not required to permit in-service distributions under any of these alternatives.

IV. ADDITIONAL DEFERRAL ELECTION

Under § 457(d)(1)(A), benefits under a § 457(b) plan generally may not be made available to a participant before the participant separates from service with the employer. In-service distributions are permitted only if the participant has an unforeseeable emergency or attains age 70½, or if the in-service distribution provision described in section III of this notice applies.

Section 1.457-1(b) of the regulations provides that amounts are not made available if a participant irrevocably elects, prior to the time the amounts become payable, to defer the payment to a fixed and determinable future time. For this purpose, the time at which amounts become payable (the “first permissible payout date”) is the earliest date on which a plan permits payments to begin after separation from service (i.e., disregarding payments to a participant who has an unforeseeable emergency or attains age 70½, or under the in-service distribution provision described in section III of this notice). Prior to the changes made by the SBJPA, a participant could not change this deferral election after the first permissible payout date.

Section 457(e)(9)(B), as amended by the SBJPA, provides that the amount payable to a participant under a § 457(b) plan is not treated as made available merely because the plan allows the participant to make an additional election, after the first permissible payout date, to defer the commencement of distributions so long as this additional deferral election is made before distributions begin (a “§ 457(e)(9)(B) additional deferral election”). Only one § 457(e)(9)(B) additional deferral election can be made after the end of the period in which the plan permits a participant to make deferral elections under § 457(d)(1)(A) and § 1.457-1(b) of the regulations.

A participant is not precluded from making a § 457(e)(9)(B) additional deferral election merely because the participant

has previously received a hardship distribution under § 457(d)(1)(A) or has made other deferral elections prior to separation from service.

The § 457(e)(9)(B) additional deferral election is not available if the participant has separated from service and distributions have begun. The § 457(e)(9)(B) additional deferral election permits the participant to elect only to defer, and not to accelerate, commencement of distributions under the plan.

The § 457(e)(9)(B) additional deferral election provision is illustrated by the following examples:

Example (1). (i) Employee A is a participant in an eligible § 457(b) plan. The plan provides that the total amount deferred under the plan is payable to a participant who separates from service before age 65. Payment is made in a lump sum 90 days after separation from service, unless, during a 30-day "window period" immediately following the separation, the participant elects to receive the payment at a later date or in 10 annual installments to begin 90 days after separation from service or at a later date. The plan also permits eligible participants to make a § 457(e)(9)(B) additional deferral election. Employee A separates from service at age 50. The next day, during the 30-day window period provided in the plan, Employee A elects to receive distribution in the form of 10 annual installment payments beginning at age 55. Two weeks later, within the 30-day window period, Employee A makes a new election permitted under the plan to receive 10 annual installment payments beginning at age 60 (instead of at age 55).

(ii) In this example, the two elections Employee A makes during the 30-day window period are not § 457(e)(9)(B) additional deferral elections (because they are made before the first permissible payout date under the plan) and therefore do not preclude the plan from allowing Employee A to make a § 457(e)(9)(B) additional deferral election after Employee A's election to receive 10 annual installment payments beginning at age 60.

Example (2). (i) The facts are the same as in Example (1). Employee A has made no other deferral elections after the 30-day window period and before age 59. While age 59, Employee A elects to defer commencement of the installment payments until Employee A attains age 65.

(ii) In this example, under § 457(e)(9)(B), the total amount payable to Employee A will not be treated as made available merely because Employee A made this additional election at age 59 (after the first permissible payout date under the plan, but before commencement of distributions). However, after making this election, Employee A may make no further elections to change the date on which distributions commence.

V. COST OF LIVING ADJUSTMENTS IN MAXIMUM DEFERRAL AMOUNT

Sections 457(b)(2) and (c)(1) limit the maximum deferrals under an eligible

§ 457(b) plan during any taxable year to \$7,500. Section 457(e)(15) provides for cost of living adjustments (in \$500 increments) of this maximum deferral amount at the same time and, generally, in the same manner as adjustments are made to the limitations for tax-qualified plans under § 415(d). This change is effective for taxable years beginning after December 31, 1996. The maximum deferral amount for each year is announced before the beginning of the year at the same time as cost of living adjustments under § 415(d).

For 1997, the maximum deferral amount remains at \$7,500. For 1998, the maximum deferral amount is \$8,000.

VI. TRUST REQUIREMENTS UNDER § 457(g)

Section 457(g) requires that all assets and income of a § 457(b) plan maintained by a state or local government employer ("governmental § 457(b) plan") be held in trust, or in custodial accounts or annuity contracts described in § 401(f), for the exclusive benefit of participants and beneficiaries. Section 457(g) applies generally to assets and income held by a governmental § 457(b) plan on and after August 20, 1996. However, with respect to a governmental § 457(b) plan in existence on August 20, 1996, a trust (or a custodial account or annuity contract) is not required to be established before January 1, 1999.

Section 457(g) does not apply to a § 457(b) plan established by a tax-exempt organization that is not a governmental entity. Prior to the addition of § 457(g) to the Code, all § 457(b) plans were subject to § 457(b)(6), which mandates that a § 457(b) plan be unfunded and that plan assets not be set aside for participants. Section 457(b)(6) continues to apply to a § 457(b) plan of a tax-exempt employer.

To satisfy the trust requirement applicable to governmental § 457(b) plans under § 457(g)(1), a trust must be established pursuant to a written agreement that constitutes a valid trust under state law. The terms of the trust must make it impossible, prior to the satisfaction of all liabilities with respect to plan participants and their beneficiaries, for any part of the assets and income of the trust to be used for, or diverted to, purposes other than for the exclusive benefit of plan participants and their beneficiaries.

In order to satisfy the requirement that all plan assets and income be held in trust, amounts deferred under a governmental § 457(b) plan after a trust has been established must be transferred to the trust within a period that is not longer than is reasonable for the proper administration of the accounts of participants. For purposes of this requirement, a governmental § 457(b) plan may provide for amounts deferred for a participant under the plan to be transferred to the trust within a specified period after the date the amounts would otherwise have been paid to the participant. For example, a governmental § 457(b) plan could provide for amounts deferred under the plan to be contributed to the trust within 15 business days following the month in which these amounts would otherwise have been paid to the participant.¹

Unless all assets or income of a plan are held in one or more trusts that satisfy the requirements of this section VI (or in custodial accounts or annuity contracts that are treated as trusts under section VII of this notice), the plan is not a § 457(b) plan because the requirements of § 457(g) are not met.

VII. CUSTODIAL ACCOUNTS AND ANNUITY CONTRACTS UNDER § 457(g)(3) TREATED AS TRUSTS

Section 457(g)(3) provides that, for purposes of the § 457(g)(1) trust requirements, custodial accounts and annuity contracts described in § 401(f) will be treated as trusts under rules similar to the rules under § 401(f). Section 1.401(f)-1(b) of the regulations contains requirements that a custodial account or an annuity contract must satisfy to be treated as a trust. For purposes of applying the § 401(f) rules under § 457(g), the requirements under § 1.401(f)-1(b) of the regulations generally will be used to determine whether a custodial account or annuity contract meets the requirements of § 457(g)(3).

A custodial account will be treated as a trust under § 457(g)(1) if the custodian is

¹Cf. section 2510.3-102(b) of the Department of Labor regulations concerning contributions to an employee pension plan that is subject to the Employee Retirement Income Security Act ("ERISA") (such as a plan qualifying under § 401(k) of the Code). A governmental § 457(b) plan is not subject to ERISA, and, thus, is not subject to the Department of Labor regulations.

a bank, as described in § 408(n), or a person who meets the nonbank trustee requirements of section VIII of this notice, and the account meets the requirements of section VI of this notice, other than the requirement that it be a trust.

An annuity contract will be treated as a trust under § 457(g)(1) if the contract is an annuity contract, as defined in § 401(g), that has been issued by an insurance company qualified to do business in the state, and the contract meets the requirements of section VI of this notice, other than the requirement that it be a trust. An annuity contract does not include a life, health or accident, property, casualty, or liability insurance contract.

The use of a custodial account or annuity contract as part of a governmental § 457(b) plan does not preclude the use of a trust or another custodial account or annuity contract as part of the same governmental § 457(b) plan, provided that all such vehicles satisfy the requirements of §§ 457(g)(1) and (3) and all assets and income of the plan are held in such vehicles. Unless all assets and income of a plan are held in one or more trusts, custodial accounts, or annuity contracts that satisfy section VI or VII of this notice, the plan is not a governmental § 457(b) plan because the requirements of § 457(g) are not met.

VIII. NONBANK CUSTODIANS

The custodian of a custodial account may be a person other than a bank only if the person demonstrates to the satisfaction of the Commissioner that the manner in which the person will administer the custodial account will be consistent with the requirements of §§ 457(g)(1) and (g)(3). To do so, the person must demonstrate that the requirements of paragraphs (2)–(6) of § 1.408–2(e) of the regulations relating to nonbank trustees will be met. The written application must be sent to the address prescribed by the Commissioner in revenue rulings, notices and other guidance

published in the Internal Revenue Bulletin in the same manner as prescribed under 1.408–2(e) of the regulations.

To the extent that a person has already demonstrated to the satisfaction of the Commissioner that the person satisfies the requirements of § 1.408–2(e) of the regulations in connection with a qualified trust (or custodial account or annuity contract) under § 401(a), that person will be deemed to satisfy the requirements of this section VIII.

IX. PAPERWORK REDUCTION ACT

The collection of information requirement contained in this notice has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1580.

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

The collection of information in this notice is pursuant to section 457(g) of the Internal Revenue Code of 1986. This information is required to ensure compliance with the statutory requirements that certain eligible deferred compensation plans hold their assets in trust for the exclusive benefit of their participants and beneficiaries. The collection of information is mandatory. The likely respondents are state or local governments.

The estimated total reporting burden is 10,600 hours.

The estimated burden per respondent varies from .033 hour to 2 hours per trust established depending upon individual respondents' circumstances, with an estimated average of one hour for each trust established, and from 20 hours to 50 hours per application for approval as a custodian with an estimated average of 35 hours for

each application submitted to qualify as a custodian. The estimated number of respondents is 10,260 including 10 applications for approval as a custodian.

The estimated frequency of responses is one-time only.

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.

DRAFTING INFORMATION

The principal author of this notice is Cheryl Press of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury participated in its development. For further information regarding this notice, contact Cheryl Press at (202) 622-6030 (not a toll-free number).

Weighted Average Interest Rate Update

Notice 98–9

Notice 88–73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103–465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for December 1997 is 5.99 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 106% Permissible Range	90% to 110% Permissible Range
January	1998	6.77	6.09 to 7.17	6.09 to 7.44

Drafting Information

The principal author of this notice is Donna Prestia of the Employee Plans Division. For further information regarding this notice, call (202) 622-6076 between 2:30 and 3:30 p.m. Eastern time (not a toll-free number). Ms. Prestia's number is (202) 622-7377 (also not a toll-free number).

26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 846, 1.846-1.)

Rev. Proc. 98-11

SECTION 1. PURPOSE

This revenue procedure prescribes the loss payment patterns and discount factors for the 1997 determination year. These factors will be used for computing discounted unpaid losses under § 846 of the Internal Revenue Code.

SEC. 2. BACKGROUND

.01 Section 846 provides that discounted unpaid losses must be separately determined for each accident year of each line of business by applying an interest rate determined under § 846(c) and the appropriate loss payment pattern to the amount of unpaid losses as measured at the end of the tax year.

Section 846(d) directs the Secretary to use the most recent aggregate loss payment data of property and casualty insurance companies to determine and publish a loss payment pattern for each line of business every five years. This payment pattern is used to discount unpaid losses for the accident year ending with a determination year and for each of the four succeeding accident years.

Section 846(e) allows a taxpayer to make an election in each determination year to use its own historical payment pattern instead of the Secretary's tables. This election does not apply to any international insurance or reinsurance line of business.

Section 846(f)(4) defines the term "line of business" as a category for the reporting of loss payment patterns on the annual statement for fire and casualty companies

approved by the National Association of Insurance Commissioners (NAIC), except that the multiple peril lines shall be treated as a single line of business. Section 846(f)(5) states that the term "multiple peril lines" means the lines of business relating to farmowners multiple peril, homeowners multiple peril, commercial multiple peril, ocean marine, aircraft (all perils) and boiler and machinery.

.02 Pursuant to § 846(d), the Secretary has determined a loss payment pattern for each property and casualty line of business for the 1997 determination year that, pursuant to § 846(d)(1), must be applied through the 2001 accident year. The loss payment patterns for the 1997 determination year are based on the aggregate industry loss payment experience as reported on the 1995 annual statements filed by property and casualty insurance companies and compiled by A.M. Best and Co.

.03 The loss payment patterns for the 1997 determination year are based on the aggregate loss payment information reported on the 1995 annual statements of property and casualty insurance companies. The tables are now arranged in alphabetical order. Following is an additional explanation of some of the tables.

(1) *NAIC changes in lines of business.* The NAIC has changed the reporting of unpaid loss experience on the annual statement for fire and casualty insurance companies. These changes are reflected in the lines of business set forth below.

(2) *Treatment of Multiple Peril Lines.* Section 846(f)(4) defines the term "line of business" and states that the multiple peril lines are to be treated as a single line of business. The term "multiple peril lines" means lines of business relating to farmowners multiple peril, homeowners multiple peril, commercial multiple peril, ocean marine, aircraft (all perils) and boiler and machinery. On the 1990 annual statement the multiple peril line was represented by the following three lines: Homeowners/Farmowners; Commercial Multiple Peril; and Special Liability (Ocean Marine, Aircraft (all Perils), Boiler and Machinery. On the 1995 annual statement, the multiple peril lines continue to be represented by the same three lines.

Revenue Procedure 92-47, 1992-2 C.B. 980, prescribed the loss payment

patterns and discount factors for the 1992 determination year. In that revenue procedure, the loss payment patterns that were used followed the changes made to the 1990 annual statement, including reporting the multiple peril lines as three separate lines of business. Subsequent revenue procedures did the same. See Rev. Proc. 93-29, 1993-2 C.B. 344, for the 1993 accident year; Rev. Proc. 94-47, 1994-2 C.B. 688, for the 1994 accident year; Rev. Proc. 95-40, 1995-2 C.B. 402, for the 1995 accident year; and Rev. Proc. 96-44, 1996-2 C.B. 330, for the 1996 accident year.

Because § 846(f)(4) requires that the multiple peril lines be treated as a single line of business, the lines of business that are shown on the 1995 annual statement as Homeowners/Farmowners; Commercial Multiple Peril; and Special Liability (Ocean Marine, Aircraft (all Perils), Boiler and Machinery) are merged in this revenue procedure as one multiple peril line of business. The merged line is entitled "Multiple Peril Lines (Homeowners/Farmowners Multiple Peril, Commercial Multiple Peril, and Special Liability (Ocean Marine, Aircraft (All Perils), Boiler and Machinery))."

(3) *Factors to be used when tables indicate loss fully paid.* In many situations, losses are deemed fully paid under the Secretary's table prior to AY+14, and no discount factor is shown for AY+14 and earlier accident years. If taxpayers have unpaid losses relating to an accident year which is older than the last accident year for which a discount factor is presented in the Secretary's table, those unpaid losses should be discounted using the discount factor for the last accident year in the Secretary's table.

SEC. 3. SCOPE

This revenue procedure applies to any taxpayer that is required to discount unpaid losses under section 846 for a line of business using the discount factors published by Secretary.

SEC. 4. TABLES OF DISCOUNT FACTORS

.01 The following tables present separately for each line of business the discount factors under section 846 of the

Code for accident year 1997. All the discount factors presented in this section were determined using the applicable interest rate under § 846(c) for 1997, 6.33 percent, and by assuming all loss pay-

ments occur in the middle of the calendar year.

.02 If the groupings of individual lines of business on the annual statement change, taxpayers must discount the un-

paid losses on the resulting line of business in accordance with the discounting patterns that would have applied to those unpaid losses based on their classification on the 1995 annual statement.

.03 Tables

Accident and Health (Other Than Disability Income or Credit Disability Insurance)

The discount factor for all years equals 96.9777 percent.

Auto Physical Damage

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	89.9430	89.9430	10.0570	9.7006	96.4556
AY+ 1	99.3814	9.4384	0.6186	0.5821	94.0911
AY+ 2	N/A	0.3093	0.3093	0.3000	96.9777

The discount factor for AY+3 and subsequent years equals 96.9777 percent.

Commercial Auto/Truck Liability/Medical

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	25.8075	25.8075	74.1925	64.8956	87.4691
AY+ 1	49.8793	24.0718	50.1207	44.1814	88.1501
AY+ 2	67.6592	17.7799	32.3408	28.6441	88.5696
AY+ 3	79.7711	12.1119	20.2289	17.9679	88.8231
AY+ 4	88.2132	8.4421	11.7868	10.4001	88.2353
AY+ 5	93.1778	4.9646	6.8222	5.9391	87.0558
AY+ 6	95.9623	2.7845	4.0377	3.4438	85.2909
AY+ 7	97.0091	1.0468	2.9909	2.5823	86.3405
AY+ 8	97.5719	0.5628	2.4281	2.1654	89.1841
AY+ 9	98.2191	0.6471	1.7809	1.6352	91.8184
AY+10	N/A	0.6471	1.1338	1.0715	94.4995
AY+11	N/A	0.6471	0.4867	0.4720	96.9777

The discount factor for AY+12 and subsequent years equals 96.9777 percent.

Composite Discount Factors

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	35.4611	35.4611	64.5389	55.1671	85.4789
AY+ 1	59.1449	23.6838	40.8551	34.2373	83.8018
AY+ 2	70.8220	11.6771	29.1780	24.3635	83.4996
AY+ 3	81.9019	11.0799	18.0981	14.4806	80.0114
AY+ 4	86.3688	4.4669	13.6312	10.7911	79.1644
AY+ 5	90.0497	3.6809	9.9503	7.6785	77.1686
AY+ 6	92.7488	2.6991	7.2512	5.3813	74.2131
AY+ 7	93.8259	1.0771	6.1741	4.6113	74.6881
AY+ 8	94.2415	0.4156	5.7585	4.4747	77.7054
AY+ 9	94.8568	0.6153	5.1432	4.1234	80.1725
AY+10	N/A	0.6153	4.5279	3.7499	82.8190
AY+11	N/A	0.6153	3.9125	3.3528	85.6937
AY+12	N/A	0.6153	3.2972	2.9305	88.8789
AY+13	N/A	0.6153	2.6819	2.4815	92.5291
AY+14	N/A	0.6153	2.0665	2.0041	96.9777

The discount factor for AY+15 and subsequent years equals 96.9777 percent.

Fidelity/Surety

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	24.1540	24.1540	75.8460	70.0818	92.4001
AY+ 1	59.0961	34.9421	40.9039	38.4870	94.0911
AY+ 2	N/A	20.4520	20.4520	19.8339	96.9777

The discount factor for AY+3 and subsequent years equals 96.9777 percent.

Financial Guaranty/Mortgage Guaranty

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	9.2513	9.2513	90.7487	83.8101	92.3540
AY+ 1	50.5659	41.3146	49.4341	46.5131	94.0911
AY+ 2	N/A	24.7171	24.7171	23.9700	96.9777

The discount factor for AY+3 and subsequent years equals 96.9777 percent.

International (Composite)

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	35.4611	35.4611	64.5389	55.1671	85.4789
AY+ 1	59.1449	23.6838	40.8551	34.2373	83.8018
AY+ 2	70.8220	11.6771	29.1780	24.3635	83.4996
AY+ 3	81.9019	11.0799	18.0981	14.4806	80.0114
AY+ 4	86.3688	4.4669	13.6312	10.7911	79.1644
AY+ 5	90.0497	3.6809	9.9503	7.6785	77.1686
AY+ 6	92.7488	2.6991	7.2512	5.3813	74.2131
AY+ 7	93.8259	1.0771	6.1741	4.6113	74.6881
AY+ 8	94.2415	0.4156	5.7585	4.4747	77.7054
AY+ 9	94.8568	0.6153	5.1432	4.1234	80.1725
AY+10	N/A	0.6153	4.5279	3.7499	82.8190
AY+11	N/A	0.6153	3.9125	3.3528	85.6937
AY+12	N/A	0.6153	3.2972	2.9305	88.8789
AY+13	N/A	0.6153	2.6819	2.4815	92.5291
AY+14	N/A	0.6153	2.0665	2.0041	96.9777

The discount factor for AY+15 and subsequent years equals 96.9777 percent.

Medical Malpractice — Claims-Made

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	6.3899	6.3899	93.6101	76.7016	81.9372
AY+ 1	24.0011	17.6112	75.9989	63.3967	83.4179
AY+ 2	42.6970	18.6959	57.3030	48.1312	83.9942
AY+ 3	58.0610	15.3640	41.9390	35.3351	84.2535
AY+ 4	69.6653	11.6043	30.3347	25.6058	84.4110
AY+ 5	75.6033	5.9380	24.3967	21.1036	86.5019
AY+ 6	81.8786	6.2753	18.1214	15.9686	88.1202
AY+ 7	87.8539	5.9753	12.1461	10.8179	89.0649
AY+ 8	89.5207	1.6668	10.4793	9.7839	93.3644
AY+ 9	94.3025	4.7818	5.6975	5.4724	96.0499
AY+10	N/A	4.7818	0.9157	0.8880	96.9777

The discount factor for AY+11 and subsequent years equals 96.9777 percent.

Medical Malpractice — Occurrence

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	2.1239	2.1239	97.8761	71.3476	72.8958
AY+ 1	6.4831	4.3592	93.5169	71.3689	76.3165
AY+ 2	15.5987	9.1156	84.4013	66.4869	78.7747
AY+ 3	31.9062	16.3075	68.0938	53.8797	79.1257
AY+ 4	45.0931	13.1868	54.9069	43.6925	79.5755
AY+ 5	50.0751	4.9821	49.9249	41.3209	82.7662
AY+ 6	60.9728	10.8976	39.0272	32.6993	83.7858
AY+ 7	69.2138	8.2411	30.7862	26.2712	85.3345
AY+ 8	72.8658	3.6519	27.1342	24.1685	89.0700
AY+ 9	80.0005	7.1347	19.9995	18.3412	91.7085
AY+10	N/A	7.1347	12.8648	12.1452	94.4063
AY+11	N/A	7.1347	5.7300	5.5569	96.9777

The discount factor for AY+12 and subsequent years equals 96.9777 percent.

Miscellaneous Casualty

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	77.6669	77.6669	22.3331	21.1546	94.7229
AY+ 1	94.0673	16.4004	5.9327	5.5822	94.0911
AY+ 2	N/A	2.9664	2.9664	2.8767	96.9777

The discount factor for AY+3 and subsequent years equals 96.9777 percent.

Multiple Peril Lines (Homeowners/Farmowners Multiple Peril, Commercial Multiple Peril, and Special Liability (Ocean Marine, Aircraft (All Perils), Boiler and Machinery))

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	55.9587	55.9587	44.0413	39.0317	88.6251
AY+ 1	77.8939	21.9352	22.1061	18.8836	85.4224
AY+ 2	84.0083	6.1144	15.9917	13.7739	86.1318
AY+ 3	91.3188	7.3105	8.6812	7.1075	81.8723
AY+ 4	92.1670	0.8482	7.8330	6.6827	85.3156
AY+ 5	94.3838	2.2168	5.6162	4.8199	85.8215
AY+ 6	96.4959	2.1121	3.5041	2.9471	84.1041
AY+ 7	97.3670	0.8712	2.6330	2.2354	84.8988
AY+ 8	98.0034	0.6364	1.9966	1.7207	86.1793
AY+ 9	98.4059	0.4025	1.5941	1.4146	88.7355
AY+10	N/A	0.4025	1.1916	1.0891	91.3925
AY+11	N/A	0.4025	0.7892	0.7430	94.1488
AY+12	N/A	0.4025	0.3867	0.3750	96.9777

The discount factor for AY+13 and subsequent years equals 96.9777 percent.

Other (Including Credit)

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	66.7418	66.7418	33.2582	31.3428	94.2407
AY+ 1	89.2755	22.5337	10.7245	10.0908	94.0911
AY+ 2	N/A	5.3622	5.3622	5.2002	96.9777

The discount factor for AY+3 and subsequent years equals 96.9777 percent.

Other Liability — Claims-Made

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	10.2440	10.2440	89.7560	73.7178	82.1313
AY+ 1	29.3763	19.1323	70.6237	58.6556	83.0537
AY+ 2	44.4111	15.0349	55.5889	46.8651	84.3066
AY+ 3	67.8197	23.4086	32.1803	25.6935	79.8425
AY+ 4	73.4753	5.6555	26.5247	21.4881	81.0117
AY+ 5	78.8604	5.3852	21.1396	17.2953	81.8150
AY+ 6	83.5027	4.6422	16.4973	13.6032	82.4571
AY+ 7	84.0676	0.5649	15.9324	13.8818	87.1292
AY+ 8	85.2129	1.1453	14.7871	13.5795	91.8334
AY+ 9	90.5992	5.3863	9.4008	8.8849	94.5123
AY+10	N/A	5.3863	4.0145	3.8932	96.9777

The discount factor for AY+11 and subsequent years equals 96.9777 percent.

Other Liability — Occurrence

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	13.5751	13.5751	86.4249	67.6678	78.2967
AY+ 1	26.3964	12.8213	73.6036	58.7304	79.7927
AY+ 2	40.2725	13.8761	59.7275	48.1394	80.5984
AY+ 3	55.4566	15.1841	44.5434	35.5293	79.7634
AY+ 4	65.3309	9.8742	34.6691	27.5964	79.5992
AY+ 5	74.0647	8.7339	25.9353	20.3372	78.4151
AY+ 6	80.9090	6.8442	19.0910	14.5670	76.3027
AY+ 7	84.3622	3.4532	15.6378	11.9282	76.2781
AY+ 8	84.6163	0.2542	15.3837	12.4212	80.7428
AY+ 9	86.7311	2.1147	13.2689	11.0268	83.1026
AY+10	N/A	2.1147	11.1542	9.5442	85.5659
AY+11	N/A	2.1147	9.0395	7.9677	88.1435
AY+12	N/A	2.1147	6.9247	6.2914	90.8543
AY+13	N/A	2.1147	4.8100	4.5090	93.7427
AY+14	N/A	2.1147	2.6953	2.6138	96.9777

The discount factor for AY+15 and subsequent years equals 96.9777 percent.

Private Passenger Auto Liability/Medical

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	37.9339	37.9339	62.0661	56.2405	90.6139
AY+ 1	67.7044	29.7705	32.2956	29.1023	90.1122
AY+ 2	81.5316	13.8272	18.4684	16.6864	90.3507
AY+ 3	89.8898	8.3583	10.1102	9.1239	90.2445
AY+ 4	94.6531	4.7633	5.3469	4.7897	89.5789
AY+ 5	97.1265	2.4734	2.8735	2.5424	88.4775
AY+ 6	98.4587	1.3322	1.5413	1.3296	86.2663
AY+ 7	98.9811	0.5224	1.0189	0.8751	85.8870
AY+ 8	99.2330	0.2519	0.7670	0.6707	87.4508
AY+ 9	99.4067	0.1737	0.5933	0.5341	90.0213
AY+10	N/A	0.1737	0.4196	0.3888	92.6584
AY+11	N/A	0.1737	0.2460	0.2344	95.2808
AY+12	N/A	0.1737	0.0723	0.0701	96.9777

The discount factor for AY+13 and subsequent years equals 96.9777 percent.

Products Liability — Claims-Made

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	4.9750	4.9750	95.0250	75.3005	79.2428
AY+ 1	15.1072	10.1322	84.8928	69.6191	82.0082
AY+ 2	30.9560	15.8488	69.0440	57.6832	83.5456
AY+ 3	38.2420	7.2860	61.7580	53.8215	87.1490
AY+ 4	68.6101	30.3681	31.3899	25.9138	82.5548
AY+ 5	78.5966	9.9865	21.4034	17.2565	80.6250
AY+ 6	88.3971	9.8005	11.6029	8.2429	71.0419
AY+ 7	93.2957	4.8986	6.7043	3.7135	55.3889
AY+ 8	88.3815	-4.9142	11.6185	9.0158	77.5989
AY+ 9	89.6105	1.2290	10.3895	8.3192	80.0734
AY+10	N/A	1.2290	9.1604	7.5785	82.7304
AY+11	N/A	1.2290	7.9314	6.7908	85.6198
AY+12	N/A	1.2290	6.7024	5.9534	88.8249
AY+13	N/A	1.2290	5.4733	5.0629	92.5009
AY+14	N/A	1.2290	4.2443	4.1160	96.9777

The discount factor for AY+15 and subsequent years equals 96.9777 percent.

Products Liability — Occurrence

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	9.0653	9.0653	90.9347	68.4900	75.3178
AY+ 1	14.9035	5.8382	85.0965	66.8052	78.5053
AY+ 2	29.2591	14.3555	70.7409	56.2311	79.4888
AY+ 3	45.6462	16.3871	54.3538	42.8927	78.9139
AY+ 4	57.5945	11.9483	42.4055	33.2872	78.4972
AY+ 5	63.8634	6.2689	36.1366	28.9300	80.0572
AY+ 6	75.2266	11.3632	24.7734	19.0439	76.8723
AY+ 7	78.2679	3.0413	21.7321	17.1133	78.7466
AY+ 8	78.1898	-0.0781	21.8102	18.2771	83.8007
AY+ 9	81.8722	3.6825	18.1278	15.6368	86.2591
AY+10	N/A	3.6825	14.4453	12.8294	88.8138
AY+11	N/A	3.6825	10.7628	9.8443	91.4657
AY+12	N/A	3.6825	7.0803	6.6702	94.2072
AY+13	N/A	3.6825	3.3979	3.2952	96.9777

The discount factor for AY+14 and subsequent years equals 96.9777 percent.

Reinsurance A (Nonproportional Property)

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	27.1668	27.1668	72.8332	64.5830	88.6725
AY+ 1	68.7008	41.5340	31.2992	25.8427	82.5667
AY+ 2	70.0362	1.3354	29.9638	26.1015	87.1103
AY+ 3	87.5338	17.4976	12.4662	9.7109	77.8976
AY+ 4	90.2132	2.6794	9.7868	7.5627	77.2743
AY+ 5	91.3751	1.1619	8.6249	6.8433	79.3434
AY+ 6	94.3845	3.0095	5.6155	4.1732	74.3169
AY+ 7	93.3293	-1.0552	6.6707	5.5255	82.8327
AY+ 8	N/A	1.0387	5.6320	4.8042	85.3021
AY+ 9	N/A	1.0387	4.5932	4.0372	87.8942
AY+10	N/A	1.0387	3.5545	3.2216	90.6354
AY+11	N/A	1.0387	2.5158	2.3545	93.5882
AY+12	N/A	1.0387	1.4771	1.4324	96.9777

The discount factor for AY+13 and subsequent years equals 96.9777 percent.

Reinsurance B (Nonproportional Liability)

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	6.6962	6.6962	93.3038	68.4343	73.3457
AY+ 1	22.3944	15.6982	77.6056	56.5788	72.9055
AY+ 2	32.6486	10.2542	67.3514	49.5864	73.6235
AY+ 3	50.2234	17.5748	49.7766	34.6027	69.5161
AY+ 4	53.5839	3.3605	46.4161	33.3279	71.8024
AY+ 5	55.6838	2.0999	44.3162	33.2721	75.0790
AY+ 6	63.6144	7.9306	36.3856	27.2005	74.7564
AY+ 7	66.4211	2.8066	33.5789	26.0282	77.5135
AY+ 8	N/A	2.8066	30.7723	24.7817	80.5325
AY+ 9	N/A	2.8066	27.9656	23.4563	83.8753
AY+10	N/A	2.8066	25.1590	22.0469	87.6304
AY+11	N/A	2.8066	22.3524	20.5484	91.9294
AY+12	N/A	2.8066	19.5457	18.9550	96.9777

The discount factor for AY+13 and subsequent years equals 96.9777 percent.

Reinsurance C (Financial Lines)

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	11.4622	11.4622	88.5378	76.8398	86.7875
AY+ 1	44.5791	33.1169	55.4209	47.5547	85.8065
AY+ 2	63.9134	19.3343	36.0866	30.6281	84.8740
AY+ 3	65.6185	1.7051	34.3815	30.8086	89.6082
AY+ 4	79.9778	14.3593	20.0222	17.9520	89.6607
AY+ 5	88.9152	8.9374	11.0848	9.8725	89.0632
AY+ 6	91.2490	2.3338	8.7510	8.0909	92.4566
AY+ 7	94.7645	3.5155	5.2355	4.9780	95.0811
AY+ 8	N/A	3.5155	1.7200	1.6680	96.9777

The discount factor for AY+9 and subsequent years equals 96.9777 percent.

Special Property (Fire, Allied Lines, Inland Marine, Earthquake, Glass, Burglary and Theft)

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	57.4895	57.4895	42.5105	40.4210	95.0847
AY+ 1	90.5193	33.0297	9.4807	8.9205	94.0911
AY+ 2	N/A	4.7404	4.7404	4.5971	96.9777

The discount factor for AY+3 and subsequent years equals 96.9777 percent.

Workers' Compensation

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factor (%)
AY+ 0	23.6461	23.6461	76.3539	62.1544	81.4030
AY+ 1	44.8166	21.1705	55.1834	44.2585	80.2025
AY+ 2	57.9652	13.1486	42.0348	33.5016	79.6998
AY+ 3	72.0542	14.0889	27.9458	21.0943	75.4828
AY+ 4	80.5542	8.5000	19.4458	13.6646	70.2704
AY+ 5	84.8876	4.3334	15.1124	10.0611	66.5754
AY+ 6	87.1173	2.2297	12.8827	8.3988	65.1946
AY+ 7	88.2647	1.1473	11.7353	7.7473	66.0173
AY+ 8	88.5404	0.2757	11.4596	7.9534	69.4041
AY+ 9	88.8062	0.2658	11.1938	8.1828	73.1011
AY+10	N/A	0.2658	10.9279	8.4266	77.1108
AY+11	N/A	0.2658	10.6621	8.6859	81.4653
AY+12	N/A	0.2658	10.3963	8.9616	86.2002
AY+13	N/A	0.2658	10.1304	9.2548	91.3560
AY+14	N/A	0.2658	9.8646	9.5665	96.9777

The discount factor for AY+15 and subsequent years equals 96.9777 percent.

SEC. 5. EFFECTIVE DATE

This revenue procedure is effective for taxable years beginning after December 31, 1996.

DRAFTING INFORMATION

The principal author of this revenue procedure is Katherine A. Hossofsky of the Office of Assistant Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Ms. Hossofsky on (202) 622-3970 (not a toll-free call).

26 CFR 601.201: Rulings and determination letters. (Also Part I, §§ 832, 846; 1.832-4, 1.846-1.)

Rev. Proc. 98-12

SECTION 1. PURPOSE

This revenue procedure prescribes the salvage discount factors for the 1997 accident year. These factors will be used for computing discounted estimated salvage recoverable under § 832 of the Internal Revenue Code.

SEC. 2. BACKGROUND

Section 832(b)(5)(A) requires that all estimated salvage recoverable (including

that which cannot be treated as an asset for state accounting purposes) be taken into account in computing the deduction for losses incurred. Under § 832(b)-(5)(A), paid losses are to be reduced by salvage and reinsurance recovered during the taxable year. This amount is adjusted to reflect changes in discounted unpaid losses on nonlife insurance contracts and in unpaid losses on life insurance contract. An adjustment is then made to reflect any changes in discounted estimated salvage recoverable and in reinsurance recoverable.

Pursuant to § 832(b), the amount of estimated salvage is determined on a discounted basis in accordance with procedures established by the Secretary.

SEC. 3. SCOPE

This revenue procedure applies to any taxpayer that is required to discount estimated salvage recoverable under § 832.

SEC. 4. APPLICATION

.01 The following tables present separately for each line of business the discount factors under § 832 for the 1997 accident year. All the discount factors presented in this section were determined using the applicable interest rate under

§ 846(c) for 1997, which is 6.33 percent, and by assuming all estimated salvage is recovered in the middle of each calendar year. The discount factors for the 1997 accident year have been adjusted to take into account changes in the groupings of the lines of business on the annual statement. In addition, see Rev. Proc. 98-11, page 9, for an explanation of the treatment of the multiple peril lines.

.02 These tables must be used by taxpayers irrespective of whether they elected to discount unpaid losses using their own historical experience under § 846.

.03 Tables.

Accident and Health (Other Than Disability Income or Credit Disability Insurance)

The discount factor for all years equals 96.9777 percent.

Auto Physical Damage

Tax Year	Discount Factors (%)
AY+ 0	95.5498
AY+ 1	94.0911
AY+ 2	96.9777

The discount factor for AY+3 and subsequent years equals 96.9777 percent.

**Commercial Auto/Truck Liability/
Medical**

Tax Year	Discount Factors (%)
AY+ 0	88.0553
AY+ 1	87.1995
AY+ 2	88.9446
AY+ 3	88.2138
AY+ 4	88.0377
AY+ 5	90.4504
AY+ 6	85.6730
AY+ 7	91.3816
AY+ 8	89.7918
AY+ 9	92.4220
AY+10	95.0477
AY+11	96.9777

The discount factor for AY+12 and subsequent years equals 96.9777 percent.

Composite Discount Factors

Tax Year	Discount Factors (%)
AY+ 0	85.5529
AY+ 1	83.9261
AY+ 2	83.4985
AY+ 3	83.3876
AY+ 4	84.1370
AY+ 5	84.7213
AY+ 6	84.7741
AY+ 7	84.8647
AY+ 8	87.7469
AY+ 9	90.3325
AY+10	92.9868
AY+11	95.6242
AY+12	96.9777

The discount factor for AY+13 and subsequent years equals 96.9777 percent.

Fidelity/Surety

Tax Year	Discount Factors (%)
AY+ 0	92.7512
AY+ 1	94.0911
AY+ 2	96.9777

The discount factor for AY+3 and subsequent years equals 96.9777 percent.

Financial Guaranty/Mortgage Guaranty

Tax Year	Discount Factors (%)
AY+ 0	94.6118
AY+ 1	94.0911
AY+ 2	96.9777

The discount factor for AY+3 and subsequent years equals 96.9777 percent.

International (Composite)

Tax Year	Discount Factors (%)
AY+ 0	85.5529
AY+ 1	83.9261
AY+ 2	83.4985
AY+ 3	83.3876
AY+ 4	84.1370
AY+ 5	84.7213
AY+ 6	84.7741
AY+ 7	84.8647
AY+ 8	87.7469
AY+ 9	90.3325
AY+10	92.9868
AY+11	95.6242
AY+12	96.9777

The discount factor for AY+13 and subsequent years equals 96.9777 percent.

Medical Malpractice — Claims-Made

Tax Year	Discount Factors (%)
AY+ 0	69.7444
AY+ 1	72.4408
AY+ 2	70.9597
AY+ 3	70.2975
AY+ 4	73.8865
AY+ 5	72.2143
AY+ 6	82.0526
AY+ 7	91.3471
AY+ 8	96.2732
AY+ 9	96.9777

The discount factor for AY+10 and subsequent years equals 96.9777 percent.

Medical Malpractice — Occurrence

Tax Year	Discount Factors (%)
AY+ 0	63.4849
AY+ 1	66.8754
AY+ 2	71.4631
AY+ 3	75.2927
AY+ 4	72.0433
AY+ 5	78.1594
AY+ 6	83.1757
AY+ 7	86.3387
AY+ 8	90.8773
AY+ 9	93.5843
AY+10	96.3144
AY+11	96.9777

The discount factor for AY+12 and subsequent years equals 96.9777 percent.

Miscellaneous Casualty

Tax Year	Discount Factors (%)
AY+ 0	94.9505
AY+ 1	94.0911
AY+ 2	96.9777

The discount factor for AY+3 and subsequent years equals 96.9777 percent.

**Multiple Peril Lines (Homeowners/
Farmowners Multiple Peril, Commercial Multiple Peril, and Special Liability (Ocean Marine, Aircraft (All Perils), Boiler and Machinery))**

Tax Year	Discount Factors (%)
AY+ 0	88.1442
AY+ 1	87.0828
AY+ 2	87.8621
AY+ 3	87.5115
AY+ 4	88.6539
AY+ 5	90.1258
AY+ 6	90.1198
AY+ 7	89.0542
AY+ 8	91.5003
AY+ 9	94.2350
AY+10	96.9777

The discount factor for AY+11 and subsequent years equals 96.9777 percent.

Other (Including Credit)

Tax Year	Discount Factors (%)
AY+ 0	96.0160
AY+ 1	94.0911
AY+ 2	96.9777

The discount factor for AY+3 and subsequent years equals 96.9777 percent.

Other Liability — Claims-Made

Tax Year	Discount Factors (%)
AY+ 0	77.1913
AY+ 1	82.7511
AY+ 2	81.7452
AY+ 3	79.3754
AY+ 4	82.4055
AY+ 5	87.1445
AY+ 6	85.6308
AY+ 7	91.3857
AY+ 8	93.5459
AY+ 9	96.2673
AY+10	96.9777

The discount factor for AY+11 and subsequent years equals 96.9777 percent.

Other Liability — Occurrence

Tax Year	Discount Factors (%)
AY+ 0	78.1808
AY+ 1	78.9149
AY+ 2	81.3348
AY+ 3	83.3371
AY+ 4	84.6107
AY+ 5	82.1372
AY+ 6	86.2972
AY+ 7	88.2925
AY+ 8	92.4786
AY+ 9	95.1025
AY+10	96.9777

The discount factor for AY+11 and subsequent years equals 96.9777 percent.

Private Passenger Auto Liability/Medical

Tax Year	Discount Factors (%)
AY+ 0	91.4258
AY+ 1	90.8687
AY+ 2	89.9218
AY+ 3	89.5302
AY+ 4	89.0574
AY+ 5	89.5204
AY+ 6	88.2913
AY+ 7	89.0287
AY+ 8	89.7296
AY+ 9	92.3587
AY+10	94.9871
AY+11	96.9777

The discount factor for AY+12 and subsequent years equals 96.9777 percent.

Products Liability — Claims-Made

Tax Year	Discount Factors (%)
AY+ 0	78.6232
AY+ 1	80.6940
AY+ 2	85.2594
AY+ 3	85.1672
AY+ 4	80.6815
AY+ 5	87.8085
AY+ 6	80.3554
AY+ 7	87.9607
AY+ 8	96.6992
AY+ 9	96.9777

The discount factor for AY+10 and subsequent years equals 96.9777 percent.

Products Liability — Occurrence

Tax Year	Discount Factors (%)
AY+ 0	75.1149
AY+ 1	77.7623
AY+ 2	76.1078
AY+ 3	77.4296
AY+ 4	79.2166
AY+ 5	78.5502
AY+ 6	79.9464
AY+ 7	71.9235
AY+ 8	77.4789

AY+ 9	79.9620
AY+10	82.6312
AY+11	85.5373
AY+12	88.7650
AY+13	92.4698
AY+14	96.9777

The discount factor for AY+15 and subsequent years equals 96.9777 percent.

Reinsurance A (Nonproportional Property)

Tax Year	Discount Factors (%)
AY+ 0	86.2624
AY+ 1	89.5106
AY+ 2	92.2926
AY+ 3	91.6380
AY+ 4	78.5001
AY+ 5	94.6795
AY+ 6	93.2638
AY+ 7	95.9330
AY+ 8	96.9777

The discount factor for AY+9 and subsequent years equals 96.9777 percent.

Reinsurance B (Nonproportional Liability)

Tax Year	Discount Factors (%)
AY+ 0	74.1864
AY+ 1	76.4932
AY+ 2	77.2282
AY+ 3	76.6129
AY+ 4	79.1554
AY+ 5	74.1193
AY+ 6	75.9021
AY+ 7	83.5464
AY+ 8	86.0047
AY+ 9	88.5652
AY+10	91.2350
AY+11	94.0259
AY+12	96.9777

The discount factor for AY+13 and subsequent years equals 96.9777 percent.

Reinsurance C (Financial Lines)

Tax Year	Discount Factors (%)
AY+ 0	80.6765
AY+ 1	83.1043
AY+ 2	86.4423
AY+ 3	92.4514
AY+ 4	90.9915
AY+ 5	92.9165
AY+ 6	89.3489
AY+ 7	96.8614
AY+ 8	96.9777

The discount factor for AY+9 and subsequent years equals 96.9777 percent.

Special Property (Fire, Allied Lines, Inland Marine, Earthquake, Glass, Burglary and Theft)

Tax Year	Discount Factors (%)
AY+ 0	92.0611
AY+ 1	94.0911
AY+ 2	96.9777

The discount factor for AY+3 and subsequent years equals 96.9777 percent.

Workers' Compensation

Tax Year	Discount Factors (%)
AY+ 0	78.0209
AY+ 1	80.4915
AY+ 2	82.4316
AY+ 3	84.0275
AY+ 4	84.1405
AY+ 5	84.3058
AY+ 6	85.5062
AY+ 7	86.2679
AY+ 8	88.7269
AY+ 9	91.3845
AY+10	94.1425
AY+11	96.9777

The discount factor for AY+12 and subsequent years equals 96.9777 percent.

SEC. 5. EFFECTIVE DATE

This revenue procedure is effective for taxable years beginning after December 31, 1996.

DRAFTING INFORMATION

The principal author of this revenue procedure is Katherine A. Hossofsky of the Office of Assistant Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Ms. Hossofsky on (202) 622-3970 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, § 646.)

Rev. Proc. 98-13

SECTION 1. PURPOSE

Section 1305 of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (1997) (Act) added § 646¹ to the Internal Revenue Code, which provides an election to have certain revocable trusts be treated and taxed as part of an estate. This revenue procedure provides the procedures and requirements for making the § 646 election.

SECTION 2. BACKGROUND

Both estates and trusts can function to settle the affairs of a decedent and distribute assets to heirs. In the case of a revocable inter vivos trust, the grantor transfers property to a trust that is revocable during the grantor's lifetime. When the grantor dies, the power to revoke ceases and the trustee performs the settlement functions typically performed by an estate executor. H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. at 711 (1997).

Section 646(a) provides that if both the executor (if any) of an estate and the trustee of a qualified revocable trust elect the treatment provided in § 646, such trust

¹H.R. 2676, 105th Cong. § 612 (1997) would redesignate § 646 as § 645. If the redesignation is enacted, all references in this revenue procedure to § 646 shall be deemed to be references to § 645.

shall be treated and taxed for income tax purposes as part of such estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date, as defined in § 646(b)(2).

Section 646(b)(1) provides that the term "qualified revocable trust" means any trust (or portion thereof) that was treated under § 676 as owned by the decedent by reason of a power in the decedent to revoke (determined without regard to § 672(e)).

Section 646(b)(2) provides that the term "applicable date" means—(A) if no estate tax return is required to be filed, the date that is 2 years after the date of the decedent's death, and (B) if an estate tax return is required to be filed, the date that is 6 months after the date of the final determination of the estate tax liability.

Section 646(c) provides that the election under § 646(a) shall be made not later than the time prescribed for filing the income tax return for the first taxable year of the estate (determined with regard to extensions), and once made, shall be irrevocable.

SECTION 3. PROCEDURES AND REQUIREMENTS FOR MAKING THE § 646 ELECTION

.01 Required Statement.

To make the election, a required statement must be attached to a Form 1041, U.S. Income Tax Return for Estates and Trusts, at the time and in the manner described in this revenue procedure. The required statement must:

(1) Identify the election as an election made under § 646;

(2) Contain the name, address, date of death, and taxpayer identification number (TIN) of the decedent;

(3) Contain the qualified revocable trust's name, address, and TIN. If the trust does not have a TIN because the trust was reporting pursuant to § 1.671-4(b)(2)(i)(A) of the Income Tax Regulations, the trustee must obtain a TIN unless a Form 1041 does not have to be filed under SECTION 3.03. See § 301.6109-1(a)(2) of the Procedure and Administration Regulations;

(4) Contain the estate's name, address, and TIN;

(5) Provide a representation that as of the date of the decedent's death, the trust for which the election is being made, or a portion thereof, was treated under § 676 as owned by the decedent of the estate referred to in § 646(a) by reason of a power in the decedent to revoke (determined without regard to § 672(e)); and

(6) Be signed and dated by both an executor or administrator of the estate and a trustee of the qualified revocable trust. If there is more than one trustee, only one must sign the required statement, unless otherwise required by the governing instrument or by local law. Similarly, if there is more than one executor, only one must sign the required statement, unless otherwise required by the governing instrument or by local law. If there is no probate estate and, hence, no executor or administrator, the election may still be made. In that case, a TIN must still be obtained for the estate and only a trustee of the qualified revocable trust must sign the required statement; however, the required statement must then include a representation that there is no executor or administrator and that neither an executor nor an administrator will be appointed.

.02 Submission of the Required Statement.

The original required statement must be attached to the Form 1041 filed for the estate for its first taxable year. Additionally, except as provided in SECTION 3.03, a copy of the required statement must be attached to a Form 1041 filed for the trust for the taxable year ending after the date of the decedent's death. The election is considered made when the original required statement is attached to the Form 1041 filed for the estate's first taxable year, or when a copy of the required statement is attached to the Form 1041 filed for the trust, whichever occurs first. Once made, the election is effective from the date of the decedent's death.

If the election is made, then the items of the trust, including income, deductions and credits, that are attributable to the qualified revocable trust for the period subsequent to the decedent's death must be excluded from the Form 1041 filed for the trust for the taxable year ending after the date of the decedent's death and must be reported on the estate's Form 1041. If there is no executor or administrator and neither one will be appointed, a trustee of

the qualified revocable trust must sign every Form 1041 filed for the estate.

If a Form 1041 reporting the items of the trust has already been filed for the trust for its taxable year ending after the date of the decedent's death without a copy of the required statement attached to the form, then the trust must file an amended Form 1041 and attach a copy of the required statement to the amended form. The items of the trust that are attributable to the qualified revocable trust for the period subsequent to the decedent's death must be excluded from the amended Form 1041 and reported on the estate's Form 1041.

.03 A Form 1041 Does Not Have to be Filed for Certain Trusts.

The trust does not have to file a Form 1041 for its taxable year ending after the date of the decedent's death if the following conditions are met: (1) The Form 1041 for the estate's first taxable year is filed before the due date for filing a Form 1041 for the trust for the taxable year ending after the date of the decedent's death; (2) The trust items attributable to the decedent are reported pursuant to § 1.671-4(b)(2)(i)(A) or (B); and (3) The entire trust is a qualified revocable trust.

SECTION 4. EFFECTIVE DATE

Section 646 applies with respect to estates of decedents dying after August 5, 1997, the date of enactment of the Act. This revenue procedure applies to elections made after August 5, 1997.

SECTION 5. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1578.

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

The collection of information in this revenue procedure is in the section headed Procedures and Requirements for Making the § 646 Election. This information is required to be submitted in order to

make the § 646 election. The likely respondents are trusts and estates.

The estimated total reporting burden is 5,000 hours.

The estimated average burden per respondent is .5 hours. The estimated number of respondents is 10,000.

The estimated frequency of responses is twice.

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.

DRAFTING INFORMATION

The principal author of this revenue procedure is Eliana Dolgoff of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Eliana Dolgoff at (202) 622-3060 (not a toll-free call).

*26 CFR 601.601: Rules and regulations.
(Also Part I, §§ 401; 1.401(b)-1.)*

Rev. Proc. 98-14

SECTION 1. PURPOSE

.01 This revenue procedure opens the Internal Revenue Service's determination letter program for qualified plans that seek to comply with the changes in the qualification requirements made by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT), and the Taxpayer Relief Act of 1997, Pub. L. 105-34 (TRA '97), as well as those changes in the qualification requirements made by the Small Business Job Protection Act of 1996, Pub. L. 104-188 (SBJPA) (including § 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353 (USERRA)), that are effective before the first day of the first plan year beginning on or after January 1, 1999. Beginning April 27, 1998, the Service will consider these changes when it reviews applications for determination of the tax-qualified status of pension, profit-sharing and stock bonus plans and applications for opinion and notification letters

for pre-approved plans. This revenue procedure provides guidance to plan sponsors regarding this change in the Service's procedures.

.02 This revenue procedure also provides that the remedial amendment period for amending plans for GATT and SBJPA, which was described in Rev. Proc. 97-41, 1997-33 I.R.B. 51, will apply to plan amendments that relate to TRA '97. In addition, this revenue procedure extends the remedial amendment period under Rev. Proc. 97-41 for amending governmental plans to the extent the period would otherwise end before the last day of the last plan year beginning before January 1, 2001.

.03 Finally, this revenue procedure clarifies that a plan will not satisfy any of the nondiscrimination in amount safe harbors in the regulations under § 401(a)(4) if the plan's provisions reflecting the family aggregation requirements of § 414(q)(6) or § 401(a)(17)(A), as in effect prior to their repeal by SBJPA, continue to apply.

SECTION 2. BACKGROUND

.01 GATT and SBJPA made a number of changes to the plan qualification requirements. Many of these changes are already in effect for most plans while other changes do not take effect until plan years beginning after December 31, 1998 or December 31, 1999. TRA '97 also made several changes to the qualification requirements. The TRA '97 changes are generally effective for plan years beginning after December 31, 1997, but certain changes are effective for plan years beginning after the date of enactment of TRA '97, August 5, 1997.

.02 In Rev. Proc. 97-41, the Service provided a remedial amendment period under § 401(b) with respect to certain amendments for GATT and SBJPA. The remedial amendment period generally permits plan amendments to be made retroactively effective if they are adopted on or before the last day of the first plan year beginning on or after January 1, 1999, and they relate to GATT and SBJPA qualification changes that are effective before the first day of that plan year. (In the case of governmental plans, as defined in § 414(d), the plan amendment deadline is the later of (i) the first day of the first plan year beginning on or after January 1, 2000, or (ii) the last day of the

first plan year beginning on or after the "1999 legislative date" (that is, the 90th day after the opening of the first legislative session beginning on or after January 1, 1999, of the governing body with authority to amend the plan, if that body does not meet continuously).) Those amendments that are required to be made to retain qualified status as a result of GATT and SBJPA qualification changes must be made retroactively effective as of the date on which the qualification change became effective with respect to the plan. Operational compliance prior to actual amendment is required if the qualification change is effective before the first day of the first plan year beginning on or after January 1, 1998 (or January 1, 2000, in the case of a governmental plan). Those amendments that are not required but that amend plan provisions that are integrally related to SBJPA qualification changes may be made retroactively effective as of the first day on which the plan was operated in accordance with the amended plan provision.

.03 Rev. Proc. 98-6, 1998-1 I.R.B. 183, contains the Service's general procedures for employee plan determination letter requests. Section 3.03 of Rev. Proc. 98-6 states that until further notice is given, determination letters, other than those issued for terminating plans, will not include consideration by the Service of any amendments to the qualification requirements made by TRA '97 or by GATT or SBJPA, except for § 1432 and § 1454 of SBJPA, which amended § 401(a)(26) and § 414(n), respectively.

.04 Section 1431(b)(1) of SBJPA repealed the family aggregation requirements of § 414(q)(6), effective for years beginning after December 31, 1996. Section 1431(b)(2) of SBJPA also repealed the family aggregation requirement that formerly applied under § 401(a)(17)(A), effective for years beginning after December 31, 1996. Prior to its repeal, § 414(q)(6) required the compensation and benefits of certain family members of a highly compensated employee who was a 5-percent owner or among the ten highest paid employees of the employer to be combined with the compensation and benefits of the highly compensated employee. The resulting family unit was treated as one employee for purposes of applying the nondiscrimination require-

ments of § 401(a)(4) to a plan. Section 401(a)(17)(A) provided similar rules with respect to the application of the limitation on compensation that may be taken into account under a qualified plan.

SECTION 3. PROGRAM OPENING

.01 Applications for determination, opinion, notification, and advisory letters involving § 401(a) or § 403(a) that are filed with the Service on or after April 27, 1998 will be reviewed taking into account the changes in the qualification requirements made by GATT and TRA '97, as well as those changes in the qualification requirements made by SBJPA that are effective before the first day of the first plan year beginning on or after January 1, 1999. However, except in the case of terminating plans, applications for determination letters involving master or prototype (M&P) and regional prototype plans that have not yet been amended to comply with the changes in the qualification requirements made by GATT, SBJPA, and TRA '97 will be reviewed without taking these changes into account.

.02 Until further notice, the Service's review of applications for determination and other letters will not consider changes in the qualification requirements made by SBJPA that are first effective in a plan year beginning after December 31, 1998. Thus, for example, the Service's review will not consider the § 401(k)(12) and § 401(m)(11) safe harbors described in § 1433(a) and (b) of SBJPA, which are effective for plan years beginning after December 31, 1998, or the repeal of § 415(e) by § 1452(a) of SBJPA, which is effective for limitation years beginning after December 31, 1999. Nevertheless, the review will take into account the changes to § 417(e) and § 415(b) made by § 767 of GATT and § 1449 of SBJPA, even though application of these changes may not be required until the first plan (or limitation) year beginning after December 31, 1999. Although defined benefit plans that are submitted for determination on or after April 27, 1998 will be required to incorporate provisions that reflect the changes to § 417(e) and § 415(b) made by GATT and SBJPA, the application of such provisions may be deferred under the plan to the extent permitted by § 417(e)(3)(B) and § 767(d)(3) of GATT (as amended by § 1449(a) of SBJPA), respectively. Like-

wise, the vesting provisions of multiemployer plans submitted on or after April 27, 1998 will have to reflect the repeal of § 411(a)(2)(C) by § 1442 of SBJPA, although application of this change may be deferred under the plan to the extent permitted by § 1442(c) of SBJPA.

.03 Except as provided below, favorable letters that are issued with respect to applications for determination or other letters filed on or after April 27, 1998 will contain a statement to the effect that the determination (or opinion) takes into account the requirements of GATT and TRA '97, as well as those requirements of SBJPA that are effective before the first day of the first plan year beginning on or after January 1, 1999.

.04 The statement described in the preceding paragraph will not be included in determination letters issued with respect to applications filed on Form 6406, *Short Form Application for Determination for Minor Amendment of Employee Benefit Plan*. The statement described in the preceding paragraph also will not be included in determination letters issued with respect to applications filed by adopters of M&P or regional prototype plans on Form 5307, *Application for Determination for Adopters of Master or Prototype, Regional Prototype, or Volume Submitter Plans, regardless of whether the opinion or notification letter for the plan contains such statement*. The statement described in the preceding paragraph will be included in opinion and notification letters issued with respect to applications filed on Form 4461-B, *Application for Approval of Master or Prototype Plan, or Regional Prototype Plan/Mass Submitter Adopting Sponsor*, only if a letter containing such a statement has been issued with respect to the mass submitter's plan.

SECTION 4. REMEDIAL AMENDMENT PERIOD FOR CHANGES IN PLAN QUALIFICATION REQUIREMENTS MADE BY TRA '97

.01 Section 1541 of TRA '97 contains provisions relating to plan amendments that are adopted as a result of TRA '97. If § 1541 applies to a plan amendment, § 1541(a) provides that the plan will be treated as operated in accordance with its terms and will not fail to satisfy the re-

quirements of § 411(d)(6) by reason of the amendment. Section 1541 applies to a plan amendment that is made pursuant to a legislative change in the pension and employee benefit provisions of TRA '97, provided the following conditions are satisfied. First, the plan amendment must be adopted before the first day of the first plan year beginning on or after January 1, 1999 (2001, in the case of a governmental plan, as defined in § 414(d)). Second, the plan must be operated in accordance with the terms of the plan amendment beginning on the date the legislative change takes effect, or, if the amendment is not required by the legislative change, the effective date of the amendment specified by the plan. Third, the plan amendment must be made retroactively effective.

.02 Pursuant to the Commissioner's authority under § 1.401(b)-1, a plan provision is hereby designated as a disqualifying provision under § 1.401(b)-1(b) to which the remedial amendment period described in section 6 of Rev. Proc. 97-41 applies if the provision causes a plan to fail to satisfy the qualification requirements of the Code because of changes made to those requirements by TRA '97 or if the provision is integral to a qualification requirement changed by TRA '97. The operational compliance and retroactive amendment conditions described in § 1541(b)(2) of TRA '97 must be satisfied throughout such remedial amendment period with respect to any amendment of a disqualifying provision described in the preceding sentence.

.03 For example, § 1071 of TRA '97 increased the amount of the accrued benefit subject to involuntary distribution under § 411(a)(11) from \$3,500 to \$5,000, effective for plan years beginning after August 5, 1997. A plan provision that reflects the \$3,500 limit under § 411(a)(11), as in effect prior to TRA '97, is integral to a qualification requirement changed by TRA '97. Thus, for example, a plan that contains the \$3,500 limit may, for plan qualification purposes, be operated during the remedial amendment period in anticipation of a retroactive amendment reflecting the increase in the limit under § 1071 of TRA '97, provided the amendment is adopted on or before the last day of the remedial amendment period and is made retroactively effective as of the beginning of the remedial amendment period. In

this case, the plan provision containing the \$3,500 limit is integrally related to a qualification requirement changed by TRA '97 but the plan provision would not disqualify the plan as a result of the statutory change. Therefore, the remedial amendment period begins on the date on or after the first day of the first plan year beginning after August 5, 1997, on which the plan was first operated in anticipation of the amendment increasing the limit to \$5,000. In the case of a nongovernmental plan, the remedial amendment period ends on the last day of the first plan year beginning on or after January 1, 1999.

SECTION 5. REMEDIAL AMENDMENT PERIOD FOR GOVERNMENTAL PLANS

Pursuant to the Commissioner's authority under § 1.401(b)-1, the remedial amendment period described in section 6 of Rev. Proc. 97-41 with respect to governmental plans, as defined in § 414(d), is hereby extended to the later of (i) the last day of the last plan year beginning before January 1, 2001, or (ii) the last day of the first plan year beginning on or after the "1999 legislative date." Thus, the remedial amendment period for amending a governmental plan for GATT, SBJPA, and TRA '97 will not end before the amendment deadline applicable to governmental plans under § 1541 of TRA '97.

SECTION 6. EFFECT OF REPEAL OF FAMILY AGGREGATION ON NONDISCRIMINATION SAFE HARBORS

.01 The regulations under § 401(a)(4) provide safe harbors that a plan may meet to satisfy the requirement that either the contributions or the benefits under the plan be nondiscriminatory in amount. See, for example, § 1.401(a)(4)-2(b) and § 1.401(a)(4)-3(b). The safe harbors generally are designed to ensure that a plan that meets a safe harbor will automatically satisfy the nondiscrimination in amount requirement if the plan is operated in accordance with its terms. In general, the safe harbors require a uniform allocation or benefit formula, although formulas that provide lower allocations or benefits for highly compensated employees are permitted.

.02 In section 6.09 of Rev. Proc. 97-

41, it was noted that in many cases plans would remain qualified even though the family aggregation rules of § 414(q)(6) and § 401(a)(17)(A) continued to apply under the plans subsequent to the repeal of these rules. Nevertheless, the continued application of family aggregation will cause a plan to fail to be a safe harbor plan. This is because the application of family aggregation may, in some circumstances, result in lower allocations or benefits for employees who are not highly compensated.

.03 Thus, a plan will not satisfy a nondiscrimination in amount safe harbor for a plan year beginning after December 31, 1996, unless family aggregation is disregarded in the operation of the plan and the plan is amended within the remedial amendment period, retroactive to the first day of such plan year, to eliminate its family aggregation provisions. Therefore, in an application for a determination letter (other than with respect to an M&P or regional prototype plan) that is filed on or after April 27, 1998, an employer may not designate a plan as one that is intended to satisfy a nondiscrimination in amount safe harbor if the family aggregation rules continue to apply under the plan. Instead, the employer must either demonstrate that the plan satisfies the general test for nondiscrimination in amount or request a letter that contains a caveat regarding the nondiscrimination in amount requirement.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 98-6 and Rev. Proc. 97-41 are modified.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective January 26, 1998.

DRAFTING INFORMATION

The principal author of this revenue procedure is James Flannery of the Employee Plans Division. For further information regarding this revenue procedure, contact the Employee Plans Division's telephone assistance service between the hours of 1:30 and 3:30 p.m. Eastern time, Monday through Thursday, on (202) 622-6074 (not a toll-free call). Mr. Flannery

can be contacted by calling (202) 622-6214 (also not a toll-free call).

26 CFR 301.6601-1: Interest on underpayments. (Also Part I, §§ 163, 2053, 6166, 6601.)

Rev. Proc. 98-15

SECTION 1. PURPOSE

This revenue procedure provides procedures for estates of decedents dying before January 1, 1998, to make an election under § 503(d)(2) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (the "Act"). This § 503(d)(2) election allows an estate to reduce the rate of interest on estate taxes deferred under § 6166 of the Internal Revenue Code and forgo the deduction for interest paid on the deferred estate taxes under §§ 2053 and 163(h).

SECTION 2. BACKGROUND

.01 *Deferral of Estate Taxes.*

(1) Section 6166 provides an election to extend the time for payment of estate tax where greater than 35 percent of the value of the adjusted gross estate consists of one or more interests in a closely held business. Only the estate of a decedent who, at the date of death, was a United States citizen or resident is eligible to make a § 6166 election.

(2) If an estate makes a § 6166 election, the estate tax may be paid in up to ten installments, with the first payment of tax due not more than five years after the date prescribed for payment of the tax. However, interest on the estate tax is not deferred. Under § 6166(f), the interest must be paid annually.

(3) Section 6601(a) imposes underpayment interest at the § 6621 underpayment rate, which for estates is the federal short-term rate plus 3 percentage points. However, § 6601(j), prior to its amendment by the Act, imposed a reduced interest rate of 4 percent on a portion (the "4-percent portion") of the estate tax deferred under § 6166. The 4-percent portion is the lesser of (i) \$345,800 reduced by the amount of the credit allowable under § 2010(a) (prior to amendment by § 501(a) of the Act), or (ii) the amount of deferred estate tax. The 4 percent rate

continues to apply to estates of decedents dying before January 1, 1998, (the effective date of § 503 of the Act) unless such an estate properly makes the § 503(d)(2) election in the manner discussed below.

.02 *Changes Made by the Act*

(1) *Reduced interest rates.*

(a) *In general.* Section 503(a)(1) of the Act amends § 6601(j) to provide a 2-percent interest rate on the "2-percent portion" (defined below) of deferred estate tax. The interest rate on deferred estate tax in excess of the 2-percent portion is 45 percent of the underpayment rate determined under § 6621.

(b) *2-percent portion.* Section 503(a)(2) of the Act provides that the 2-percent portion is an amount of deferred estate tax not exceeding the lesser of (i) the tentative tax under § 2001(c) computed on \$1,000,000 plus the § 2010(c) (as amended by § 501(a) of the Act) applicable exclusion amount, reduced by the § 2010(c) applicable credit amount, or (ii) the amount of the deferred estate tax.

(2) *Elimination of interest deduction.* Section 503(b) of the Act amends §§ 163 and 2053 to eliminate both the income tax and the estate tax deductions for interest paid on § 6166 deferred estate tax.

(3) *Effective dates.* Pursuant to § 503(d)(1) of the Act, the amendments described in this section 2.02 generally apply to estates of decedents dying after December 31, 1997. However, § 503(d)(2) provides that any estate of a decedent dying before January 1, 1998, that has made a § 6166 election may elect to have the reduced interest rates and nondeductibility amendments (but not the 2-percent portion) contained in § 503 apply to installments due after the effective date of the election. The election must be made before January 1, 1999, in a manner prescribed by the Secretary and, once made, is irrevocable.

SECTION 3. SCOPE

This revenue procedure applies to estates of decedents dying before January 1, 1998, that properly elect under § 6166 to defer payment of estate taxes, and that wish to elect to apply the new reduced interest rates of § 6601(j), as amended, and forgo the estate tax and income tax deductions for interest paid on deferred estate tax. The new rates and the nondeductibil-

ity provision apply automatically in the case of estates of decedents dying after December 31, 1997.

SECTION 4. PROCEDURE

.01 *Making a § 503(d)(2) Election.* After August 5, 1997, but before January 1, 1999, an estate may make a § 503(d)(2) election by writing a letter to the Service Center where the next installment of estate tax or interest is due. If an estate of a decedent dying before January 1, 1998, has not filed an estate tax return as of January 26, 1998, the letter may be attached to the estate tax return. No § 503(d)(2) election may be made before a § 6166 election is made. The letter must include the following information:

- (1) the decedent's name;
- (2) the estate's EIN;
- (3) a statement that the letter is an election under § 503(d)(2) of the Taxpayer Relief Act of 1997; and
- (4) the due date of the installment of estate tax or interest for which the election is to be effective.

The letter must be signed and dated by the executor. Once made, the § 503(d)(2) election cannot be modified or revoked.

.02 *Effective Date of the § 503(d)(2) Election.* Generally, a § 503(d)(2) election is effective beginning with the first

installment of estate tax or interest due on or after the date the election is filed with the appropriate Service Center. However, a § 503(d)(2) election made by April 27, 1998, will be effective beginning with any installment, designated by the executor, due after August 5, 1997, and on or before April 27, 1998. Any assessment that was proper when made, but that becomes excessive as a result of the election, will be abated. Future installments due will be calculated and any overpayment of an installment of either tax or interest will be applied to the next installment in accordance with § 6403.

SECTION 5. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1585.

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

The collections of information in this revenue procedure are contained in SECTION 4 of this revenue procedure. This

information is required to verify that estates are electing under § 503(d)(2) of the Taxpayer Relief Act of 1997 to apply the reduced interest rates of § 6601(j), as amended, to deferred estate taxes. The likely respondents are estates.

The estimated total annual recordkeeping burden will be 3,300 hours.

The estimated annual burden per respondent will vary from 15 minutes to 45 minutes, depending on individual circumstances, with an estimated average of 30 minutes.

The estimated number of respondents is 6,600.

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.

DRAFTING INFORMATION

The principal author of this revenue procedure is Brendan P. O'Hara of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure contact Brendan P. O'Hara at (202) 622-4910 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Required Distributions From Qualified Plans and Individual Retirement Plans

REG-209463-82

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains amendments to the existing proposed regulations under section 401(a)(9) that make changes to the rules that apply if a trust is named as a beneficiary of an employee's benefit under a retirement plan. These proposed regulations will affect administrators of, participants in, and beneficiaries of qualified plans, institutions which sponsor and individuals who administer individual retirement plans, individuals who use individual retirement plans, simplified employee pensions and SIMPLE Savings Plans for retirement income and beneficiaries of individual retirement plans; and employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts and beneficiaries of such contracts and accounts.

DATES: Written comments and requests for a public hearing must be received by March 30, 1998.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG-209463-82), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-209463-82), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html

FOR FURTHER INFORMATION CONTACT: Thomas Foley at (202) 622-6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). 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 March 2, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the **Internal Revenue Service**, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

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

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

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in Question and Answer D-7 of §1.401(a)(9)-1. This information is required for a taxpayer who wants to name a trust and treat the underlying beneficiaries of the trust as designated beneficiaries of the taxpayer's benefit under a retirement plan or an individual retirement plan ("IRA"). The taxpayer must provide a copy of the trust instrument or IRA trustee, custodian, or issuer, or provide a list of all the beneficiaries of the trust, certify that, to the best of the taxpayer's knowledge, this list is correct and complete, and agree to pro-

vide a copy of the trust instrument upon demand. In addition, other related requirements for the beneficiaries of the trust to be treated as designated beneficiaries must be satisfied. If the trust instrument is amended at any time in the future, the taxpayer must, within a reasonable time, provide a copy of each such amendment, or provide corrected certifications to the extent that the amendment changes the information previously certified. In addition, by the end of the ninth month after the death of the taxpayer, the trustee of the trust must provide a copy of the trust to the plan administrator or IRA trustee, custodian, or issuer, or provide a list of all the beneficiaries of the trust, certify that, to the best of the taxpayer's knowledge, this list is correct and complete, and agrees to provide a copy of the trust instrument upon demand. The collection of information is required to obtain a benefit. The likely respondents are individuals or households.

Estimated total annual reporting hours is 333 hours.

The estimated average burden per respondent is 20 minutes.

The estimated total number of respondents is 1,000.

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

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.

Background

On July 27, 1987, Proposed Regulations (EE-113-82 [1987-2 C.B. 881]) under sections 401(a)(9), 403(b), 408, and 4974 of the Internal Revenue Code of 1986 were published in the **Federal Register** (52 FR 28070) Those proposed regulations provide guidance for complying with the rules relating to required distributions from qualified plans, individual retirement plans, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts. This document

contains amendments to proposed § 1.401(a)(9)-1 (hereinafter referred to as the Existing Proposed Regulations) that was included in EE-113-82. Specifically this document contains amendments to Q&As D-5 and Q&A D-6 of the Existing Proposed Regulations which prescribe specific requirements that must be met when a trust is named as a beneficiary of an employee's benefit under a plan, and adds a new Q&A D-7 to the Existing Proposed Regulations. Proposed §§ 1.408-8 and 1.403(b)-2 (also included in EE-113-82) provide that the provisions of proposed § 1.401(a)(9)-1 generally apply to individual retirement plans, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts. Accordingly, these amendments and additions also generally apply to such plans, contracts, and accounts.

The amendments and additions to the Existing Proposed Regulations in these proposed regulations are issued in response to comments and questions received regarding the Existing Proposed Regulations with respect to section 401(a)(9). Treasury and the IRS continue to welcome additional comments concerning the Existing Proposed Regulations and the other sections of EE-113-82.

As in the case of the Existing Proposed Regulations and the other sections of EE-113-82, taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Explanation of provisions

Overview

Section 401(a)(9)(A) provides that, in order for a plan to be qualified under section 401(a), distributions of each employee's interest in the plan must commence no later than the "required beginning date" for the employee and must be distributed over a period not to exceed the joint lives or joint life expectancy of the employee and the employee's designated beneficiary. Section 401(a)(9)(B) provides that if distribution does not commence prior to death in accordance with section 401(a)(9)(A), distributions of the employee's interest must

be made within 5 years of the employee's death or, generally, commence within one year of the employee's death and be made over the life or life expectancy of the designated beneficiary.

Section 401(a)(9)(E) defines the term "designated beneficiary" as an individual designated as a beneficiary by the employee. The Existing Proposed Regulations provide that, for purposes of section 401(a)(9), only individuals may be designated beneficiaries. A beneficiary who is not an individual, such as the employee's estate, may not be a designated beneficiary for purposes of determining the minimum required distribution, but nevertheless may be designated as the employee's beneficiary under the plan. If a beneficiary who is not an individual is designated to receive an employee's benefit after death, the employee is treated as having no designated beneficiary when determining the required minimum distribution. In that case, under section 401(a)(9), distributions commencing before death must be made over the employee's single life or life expectancy and distributions commencing after death must be made within 5 years of the employee's death.

However, the Existing Proposed Regulations provide that if a trust is named as a beneficiary of an employee's benefit under the plan, the underlying beneficiaries of the trust may be treated as designated beneficiaries for purposes of section 401(a)(9) if certain requirements are satisfied. In response to comments, these proposed regulations modify these trust beneficiary requirements as explained below by:

- Permitting the designated beneficiary of a revocable trust to be treated as the designated beneficiary for purposes of determining the minimum distribution under section 401(a)(9), provided that the trust becomes irrevocable upon the death of the employee.
- Providing relief from the requirement that the plan be provided with a copy of the trust document if certain certification requirements are met.

Irrevocability of trust

The Existing Proposed Regulations generally provide that a trust must be irrevocable as of the employee's required beginning date in order for the beneficiaries of the trust to be treated as designated

beneficiaries under the plan for purposes of determining the distribution period under section 401(a)(9)(A). Commentators have indicated that most trusts established for estate planning purposes and designated as the beneficiary of an employee's plan benefits are revocable instruments prior to the death of the employee. In response to those comments, these proposed regulations provide that a trust named as beneficiary of an employee's interest in a retirement plan be permitted to be revocable while the employee is alive, provided that it becomes irrevocable, by its terms, upon the death of the employee. The requirements in the Existing Proposed Regulations that the trust be valid under state law (or would be but for the fact that there is no corpus) and that the beneficiaries be identifiable from the trust instrument are retained.

Information to Plan Administrator

In order to permit the plan administrator to substantiate that the requirements for treating the beneficiaries of the trust as designated beneficiaries under the plan are satisfied, the Existing Proposed Regulations require that a copy of the trust instrument be provided to the plan administrator by the earlier of the required beginning date or the date of the employee's death. In response to comments, this proposed regulation permits an alternative method of substantiation.

As under the Existing Proposed Regulations, a copy of the trust instrument may be provided to the plan administrator. However, because the trust need not be irrevocable, under this method, the employee must also agree that if the trust instrument is amended at any time in the future, the employee will, within a reasonable time, provide a copy of each such amendment.

Alternatively, the employee may provide a list of all of the beneficiaries of the trust (including contingent beneficiaries) with a description of the portion to which they are entitled and any conditions on their entitlement, and certify that, to the best of the employee's knowledge, this list is correct and complete and that the other requirements for the beneficiaries of the trust to be treated as designated beneficiaries are satisfied. Under the second method, the employee must also agree to provide corrected certifications to the ex-

tent that the amendment changes the information previously certified. Finally, the employee must agree to provide a copy of the trust instrument to the plan administrator upon demand.

In addition, these proposed regulations provide that, if the minimum required distributions after death are determined by treating the beneficiaries of the trust as designated beneficiaries, a final certification as to the beneficiaries of the trust instrument must be provided to the plan administrator by the end of the ninth month after the death of the employee. This rule applies even if a copy of the trust instrument were provided to the plan administrator before the employee's death. Alternatively, an updated trust instrument may be provided.

The proposed regulations also provide that a plan will not fail to satisfy section 401(a)(9) merely because the terms of the actual trust instrument are inconsistent with the information in the certifications or trust instruments previously provided to the plan administrator if the plan administrator reasonably relies on the information provided in the certifications or trust instruments. However, the minimum required distributions for years after the year in which the discrepancy is discovered must be determined based on the actual terms of the trust instrument. For those years, the minimum required distribution will be determined by treating the beneficiaries of the employee as having been changed in the year in which the year the discrepancy was discovered to conform to the corrected information and by applying the change in beneficiary provisions found under the Existing Proposed Regulations. However, for purposes of determining the amount of the excise tax under section 4974 (including application of a waiver, if any, for reasonable error under section 4974), the minimum required distribution is determined for any year based on the actual terms of the trust in effect during the year.

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 de-

termined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Moreover, it hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the reporting burden is primarily on the plan participant to supply the information rather than on the entity maintaining the retirement plan and the fact that the number of participants per plan to whom the burden applies is insignificant. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) 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 Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or comments transmitted via Internet that are submitted timely to the IRS. All comments will be available for public inspection and copying.

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

Drafting Information

The principal author of these regulations is Cheryl Press, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Amendments to the Previously Proposed Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.401(a)(9)–1, as proposed to be added at 52 FR 28075, July 27, 1987, is amended by:

- 1. Revising Q&A D–5
- 2. Revising Q&A D–6.
- 3. Adding Q&A D–7

The additions and revisions read as follows:

§ 1.401(a)(9)–1 Required distributions from trust and plans.

* * * * *

D. Determination of the Designated Beneficiary.

* * * * *

D–5. Q. If a trust is named as a beneficiary of an employee, will the beneficiaries of the trust with respect to the trust's interest in the employee's benefit be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)–(A)(ii)?

A. (a) Pursuant to D–2A of this section, only an individual may be a designated beneficiary for purposes of determining the distribution period under section 401(a)(9)(A)(ii). Consequently, a trust itself may not be the designated beneficiary even though the trust is named as a beneficiary. However, if the requirements of paragraph (b) of this D–5 are met, distributions made to the trust will be treated as paid to the beneficiaries of the trust with respect to the trust's interest in the employee's benefit, and the beneficiaries of the trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(A)(ii). If, as of any date on or after the employee's required beginning date, a trust is named as a beneficiary of the employee and the requirements in paragraph (b) of this D–5A are not met, the employee will be treated as not having a designated beneficiary under the plan for purposes of section 401(a)(9)(A)(ii). Consequently, for cal-

endar years beginning after that date, distribution must be made over the employee's life (or over the period which would have been the employee's remaining life expectancy determined as if no beneficiary had been designated as of the employee's required beginning date).

(b) The requirements of this paragraph (b) are met if, as of the later of the date on which the trust is named as a beneficiary of the employee, or the employee's required beginning date, and as of all subsequent periods during which the trust is named as a beneficiary, the following requirements are met:

(1) The trust is a valid trust under state law, or would be but for the fact that there is no corpus.

(2) The trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee.

(3) The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable from the trust instrument within the meaning of D-2 of this section.

(4) The documentation described in D-7 of this section has been provided to the plan administrator.

(c) In the case of payments to a trust having more than one beneficiary, see E-5 of this section for the rules for determining the designated beneficiary whose life expectancy will be used to determine the distribution period. If the beneficiary of the trust named as beneficiary is another trust, the beneficiaries of the other trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)-(A)(ii), provided that the requirements of paragraph (b) of this D-5A are satisfied with respect to such other trust in addition to the trust named as beneficiary.

D-6. Q. If a trust is named as a beneficiary of an employee, will the beneficiaries of the trust with respect to the trust's interest in the employee's benefit be treated as designated beneficiaries under the plan with respect to the employee for purposes of determining the distribution period under section 401(a)(9)(B)(iii) and (iv)?

A. (a) If a trust is named as a beneficiary of an employee and the requirements of paragraph (b) of D-5A of this section are satisfied as of the date of the

employee's death or, in the case of the documentation described in D-7 of this section, by the end of the ninth month beginning after the employee's date of death, then distributions to the trust for purposes of section 401(a)(9) will be treated as being paid to the appropriate beneficiary of the trust with respect to the trust's interest in the employee's benefit, and all beneficiaries of the trust with respect to the trust's interest in the employee's benefit will be treated as designated beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(B)(iii) and (iv). If the beneficiary of the trust named as beneficiary is another trust, the beneficiaries of the other trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)-(B)(iii) and (iv), provided that the requirements of paragraph (b) of D-5A of this section are satisfied with respect to such other trust in addition to the trust named as beneficiary. If a trust is named as a beneficiary of an employee and if the requirements of paragraph (b) of D-5A of this section are not satisfied as of the dates specified in the first sentence of this paragraph, the employee will be treated as not having a designated beneficiary under the plan. Consequently, distribution must be made in accordance with the five-year rule in section 401(a)(9)(B)(ii).

(b) The rules of D-5 of this section and this D-6 also apply for purposes of applying the provisions of section 401(a)(9)-(B)(iv)(II) if a trust is named as a beneficiary of the employee's surviving spouse. In the case of payments to a trust having more than one beneficiary, see E-5 of this section for the rules for determining the designated beneficiary whose life expectancy will be used to determine the distribution period.

D-7. Q. If a trust is named as a beneficiary of an employee, what documentation must be provided to the plan administrator so that the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable to the plan administrator?

A. (a) *Required distributions commencing before death.* In order to satisfy the requirement of paragraph (b)(4) of D-5A of

this section for distributions required under section 401(a)(9) to commence before the death of an employee, the employee must comply with either paragraph (a)(1) or (2) of this D-7A:

(1) The employee provides to the plan administrator a copy of the trust instrument and agrees that if the trust instrument is amended at any time in the future, the employee will, within a reasonable time, provide to the plan administrator a copy of each such amendment.

(2) The employee—

(i) Provides to the plan administrator a list of all of the beneficiaries of the trust (including contingent and remainderman beneficiaries with a description of the conditions on their entitlement);

(ii) Certifies that, to the best of the employee's knowledge, this list is correct and complete and that the requirements of paragraphs (b)(1), (2), and (3) of D-5A of this section are satisfied;

(iii) Agrees to provide corrected certifications to the extent that an amendment changes any information previously certified; and

(iv) Agrees to provide a copy of the trust instrument to the plan administrator upon demand.

(b) *Required distributions after death.* In order to satisfy the documentation requirement of this D-7 for required distributions after death, by the end of the ninth month beginning after the death of the employee, the trustee of the trust must either

(1) Provide the plan administrator with a final list of all of the beneficiaries of the trust (including contingent and remainderman beneficiaries with a description of the conditions on their entitlement) as of the date of death; certify that, to the best of the trustee's knowledge, this list is correct and complete and that the requirements of paragraph (b)(1), (2), and (3) of D-5A of this section are satisfied as of the date of death; and agree to provide a copy of the trust instrument to the plan administrator upon demand; or

(2) Provide the plan administrator with a copy of the actual trust document for the trust that is named as a beneficiary of the employee under the plan as of the employee's date of death.

(c) *Relief for discrepancy between trust instrument and employee certifications or earlier trust instruments.* (1) If required

distributions are determined based on the information provided to the plan administrator in certifications or trust instruments described in paragraph (a)(1), (a)(2) or (b) of this D-7A, a plan will not fail to satisfy section 401(a)(9) merely because the actual terms of the trust instrument are inconsistent with the information in those certifications or trust instruments previously provided to the plan administrator, but only if the plan administrator reasonably relied on the information provided and the minimum required distributions for calendar years after the calendar year in which the discrepancy is discovered are determined based on the actual terms of the trust instrument. For purposes of determining whether the plan satisfies section 401(a)(9) for calendar years after the calendar year in which the discrepancy is discovered, if the actual beneficiaries under the trust instrument are different from the beneficiaries previously certified or listed in the trust instrument previously provided to the plan administrator, or the trust instrument specifying the actual beneficiaries does not satisfy the other requirements of paragraph (b) of D-5A of this section, the minimum required distribution will be determined by treating the beneficiaries of the employee as having been changed in the calendar year in which the discrepancy was discovered to conform to the corrected information and by applying the change in beneficiary provisions of E-5 of this section.

(2) For purposes of determining the amount of the excise tax under section 4974, the minimum required distribution is determined for any year based on the actual terms of the trust in effect during the year.

* * * * *

Michael P. Dolan,
Deputy Commissioner of
Internal Revenue.

(Filed by the Office of the Federal Register on December 29, 1997, 8:45 a.m., and published in the issue of the Federal Register for December 30, 1997, 62 F.R. 67780)

Foundations Status of Certain
Organizations
Announcement 98-4

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:

- Association of Business Administration of Christian Colleges, River Forest, IL
- Chicano-Latino Medical Association of California Foundation, Montebello, CA
- Children of Light, Mill Valley, CA
- Childrens Life Foundation of America, San Diego, CA
- Club Social San Pedro Tesistan, Watsonville, CA
- Coalition of Mental Health Professional Inc., Los Angeles, CA
- Comfort Zone Group Homes, Compton, CA
- Communications Connection Center Inc., Marina Del Rey, CA
- Cook Island Institute, San Francisco, CA
- Coos River Step Association Inc., Eastside, OR
- Cosmos Affiliates, Highland, CA
- Country Hospice Association, Enumclaw, WA
- Creative Response of the Arts Inc., La Jolla, CA
- Culpeppers Affordable Housing and Emergency Shelter, Sherman Oaks, CA
- Cultural Bridges, Alameda, CA
- I Became a Star Foundation Inc., Antioch, TN
- I C E Supervised Independent Living Center, Inc., New Orleans, LA
- Idora Park Historical Society Inc., Youngstown, OH
- Illegitimate Theater Company Inc., Sierra Vista, AZ
- Illinois Insurance Exchange Foundation, Chicago, IL
- Illinois Nursing Home Administrators Foundation, Springfield, IL

- Image Plus Organization Inc., Chicago, IL
- Immigration Support Services Inc., Lexington, KY
- Immunodeficiency Collaborative of America, Washington, DC
- Independence Non Profit Housing Corporation, Marquette, MI
- Independence Nonprofit Development Corporation, Detroit, MI
- Independence Science and Technology Center, Inc., Independence, KS
- India Cultural and Education, Inc., Gainesville, FL
- India League of Ohio, Columbus, OH
- Indian Heritage Association Inc., Great Falls, MT
- Indian Trace Education Fund Inc., Ft. Lauderdale, FL
- Indiana Junior High Christian Convention, Anderson, IN
- Indiana Relief Foundation Inc., Indianapolis, IN
- Indiana Spina Bifida Association, Inc., South Bend, IN
- Indianapolis Tawl Inc., Carmel, IN
- Indy-American Expeditions, Incorporated, Rosedale, IN
- Information Access Institute, La Porte, TX
- Inner-City Community Development Corporation, Denver, CO
- Inner City Community Task Force, Lynchburg, VA
- Inner City Development Group, Detroit, MI
- Inner City Development Non Profit Housing Corporation, Ann Arbor, MI
- Inner City Mountain Movers Community Development Corporation, Detroit, MI
- Inner City Recovery Program, Inc., Houston, TX
- Inner Spaces Network Inc., Pittsburgh, PA
- Innovative Human Services Corporation, Southfield, MI
- Inside Corporation, Chamblee, GA
- Insight Unlimited Inc., Sebastian, FL
- Inspirational Community Center Soup Kitchen, Detroit, MI
- In Step Ministries Inc., Memphis, TN
- Institute for Adolescent Development, Batavia, OH
- Institute for Continuing Education in Communications, Inc., Atlanta, GA
- Institute for Health Care Research Inc., Miami Lakes, FL
- Institute for International Trade & Investment, Dekalb, IL

Institute for Leadership Education
Advancement & Development, Inc.,
Philadelphia, PA

Institute for Quality in Professional
Speaking, Inc., Overland Park, KS

Institute for Research on Boards of
Directors, Inc., Sarasota, FL

Institute for Youth Development and
Educational Resources, Fayetteville,
NC

Institute of International Banking Law
and Practice, Inc., Gaithersburg, MD

Institute of Scholar Athletes Inc.,
Columbia, MD

Instituto Cultural Latino-Americano, Inc.,
Detroit, MI

Inter-Connections Drop-In Center Inc.,
Adrian, MI

Interdenominational Ministerial Alliance
Incorporated, Indianapolis, IN

Interdenominational Ministerial Alliance
of Greater Cincinnati, Cincinnati, OH

Interfaith Hospitality Network of
Washington County Inc., Ann Arbor,
MI

Intergenerational Festivals Inc., Tampa,
FL

Intermountain Child Care Services Inc.,
Murray, UT

Intermountain Education Center, Logan,
UT

International Assistance Project of
Alabama Inc., Montgomery, AL

International Center for Tourism Planning
and Design, Englewood, CO

International Children Care, Houston, TX

International Christian Single Helpmate
Groups, Inc., Woodridge, IL

International Federation of Palynological
Societies, Tucson, AZ

International Health Dynamics Inc.,
Colorado Springs, CO

International Institute for Baubiologie
and Ecology, Inc., Clearwater, FL

International Medical Outreach Inc.,
Houston, TX

International Orchid Seed Foundation,
Inc., Labelle, FL

International Society for Social Con-
sciousness, Southfield, MI

International Tribunal Fund Inc., Key
Biscayne, FL

International Youth Exchange Inc., Cape
Coral, FL

Intersouth Sheltercare, Tucson, AZ

Inter-Tribal Trade Center, Lafayette, CO

In The Paint Inc., Milwaukee, WI

In The Warmth of His Glow Ministries
Inc., Tulsa, OK

In Touch Ministries Inc., Richmond, VA

Inventors Network, Stillwater, MN

Iowa City Jazz Festival Inc., Iowa City,
IA

Iowa Hawkeye Floor Covering
Association, Inc., Des Moines, IA

Iowa Problem Gambling Council Inc.,
Des Moines, IA

IRCC Truckers Legal Defense and
Education Fund of Minnesota, Clinton,
MN

Irish American Information Service,
Livonia, MI

Irish Childrens Summer Program of
Aurens County, Clinton, SC

Iron Two Iron Church, Cleveland, OH

Ironton Metropolitan Housing Authority
Tenants Council, Inc., Ironton, OH

Irregular Pearl, Dallas, TX

Isis Performance Company-The World
Organization of Art Culture Music,
Atlanta, GA

Isis T. Johnson Foundation, New Orleans,
LA

Islamic Foundation of Florida Inc.,
Miami Beach, FL

Islamic Science Research Institute Inc.,
Mt. Clemens, MI

Mission Specialities, Inc., Marietta, GA

U.S. Prayer Track, Inc., Houston, TX

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.

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 ap-

plies 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. Proc.—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.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1997-27 through 1997-52 will be found in Internal Revenue Bulletin 1998-1, dated January 5, 1998.

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