

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. 2009-24, page 306.

Section 1256 contracts marked to market. This ruling holds that ICE Futures Canada, Inc., which is a regulated exchange of Canada, is a qualified board or exchange within the meaning of section 1256(g)(7)(C) of the Code.

Notice 2009-64, page 307.

This notice proposes a revenue ruling that would hold that tangible assets used in converting corn to fuel grade ethanol are properly included in asset class 49.5 of Rev. Proc. 87-56 for depreciation purposes. Comments are requested by November 23, 2009.

Rev. Proc. 2009-37, page 309.

This procedure provides guidance to taxpayers on electing to defer recognizing cancellation of indebtedness income under section 108(i) of the Code and section 1231 of the American Recovery and Reinvestment Tax Act of 2009.

EXEMPT ORGANIZATIONS

Announcement 2009-64, page 319.

The IRS has revoked its determination that HFZ Charitable Supporting Organization of Santa Barbara, CA; Main Homes Community Development Corporation of Columbus, OH; North American Housing Foundation of Spokane, WA; and The Valcarce Foundation of Bountiful, UT, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

Announcements of Disbarments and Suspensions begin on page 319.
Finding Lists begin on page ii.



The IRS Mission

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

the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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.

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

Section 1256.—Section 1256 Contracts Marked to Market

(Also: §§ 446, 481, 7805; 1.446-1, 301.7805-1.)

Section 1256 contracts marked to market. This ruling holds that ICE Futures Canada, Inc., which is a regulated exchange of Canada, is a qualified board or exchange within the meaning of section 1256(g)(7)(C) of the Code.

Rev. Rul. 2009-24

ISSUE

Is ICE Futures Canada, Inc., which is a commodity futures exchange and a self-regulatory organization of Manitoba, Canada, a qualified board or exchange within the meaning of section 1256(g)(7)(C) of the Internal Revenue Code?

LAW AND ANALYSIS

Section 1256(g)(7) provides that the term “qualified board or exchange” means:

(A) a national securities exchange which is registered with the Securities and Exchange Commission,

(B) a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission, or

(C) any other exchange, board of trade, or other market which the Secretary determines has rules adequate to carry out the purposes of section 1256.

HOLDING

The Internal Revenue Service determines that ICE Futures Canada, Inc., which is a regulated exchange of Canada, is a qualified board or exchange within the meaning of section 1256(g)(7)(C).

EFFECTIVE DATE

Under the authority of section 7805(b)(8) of the Code, this revenue ruling is effective for ICE Futures Canada Contracts (commodity futures contracts and futures contract options) entered into on or after October 1, 2009.

CHANGE IN METHOD OF ACCOUNTING

A change in the treatment of ICE Futures Canada Contracts to comply with this revenue ruling is a change in method of accounting within the meaning of sec-

tions 446 and 481 and the regulations thereunder. The Commissioner grants consent to taxpayers to change to the section 1256 mark to market method for the first taxable year during which the taxpayer holds an ICE Futures Canada Contract that was entered into on or after October 1, 2009. Such a taxpayer need not file a Form 3115, *Application for Change in Accounting Method*, and ICE Futures Canada Contracts that were entered into before October 1, 2009 will not be covered by the change in method for which consent is granted. Because the change is being made on a “cut-off” basis, there is no potential omission or duplication of income or deductions, and therefore no adjustment under section 481 is required.

DRAFTING INFORMATION

The principal author of this revenue ruling is Andrea Hoffenson of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling, contact Andrea Hoffenson at (202) 622-3930 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Proposed Revenue Ruling Regarding Depreciation of Ethanol Plants

Notice 2009-64

This notice provides a proposed revenue ruling concerning the depreciation of tangible assets that are used in converting corn to fuel grade ethanol.

The proposed revenue ruling concludes that the appropriate depreciation classification for these assets is asset class 49.5, Waste Reduction and Resource Recovery Plants, of Rev. Proc. 87-56, 1987-2 C.B. 674, as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785, for purposes of determining depreciation under § 168 of the Internal Revenue Code. This conclusion is based on the asset class description, the applicable definition of biomass, and the fact that conversion of biomass into a liquid fuel is the primary business activity and use of the facility. It is expected that this depreciation classification would apply to assets placed in service on or after the publication of a final revenue ruling. Consequently, the Internal Revenue Service will not require taxpayers to adopt this depreciation classification for tangible assets used in converting biomass to a liquid fuel such as fuel grade ethanol that are placed in service prior to the publication of a final revenue ruling.

The Service and Treasury Department request public comments regarding the proposed revenue ruling. A final revenue ruling will not be issued until the comments have been considered. All comments will be available for public inspection and copying.

Comments must be submitted in writing on or before November 23, 2009, and should include a reference to Notice 2009-64. Submissions should be sent to:

Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2009-64), Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions also may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m.

to: CC:PA:LPD:PR (Notice 2009-64), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Alternatively, comments may be submitted electronically directly to the Service via the following e-mail address: Notice.comments@irs.counsel.treas.gov. Please include "Notice 2009-64" in the subject line of any electronic communication.

PROPOSED REVENUE RULING

Rev. Rul. [XXXX-XX]

ISSUE

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

FACTS

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

Taxpayer uses a dry milling process to produce fuel grade ethanol. Taxpayer grinds the corn into flour, mixes the resulting corn flour with water, increases the temperature, and adds enzymes to convert the starch in the solution to simple sugars. Taxpayer feeds the resulting mash (water, sugars and non-convertible solids) into fermentation tanks where yeast is added. Over a period of several days the yeast metabolizes the sugars into ethanol and carbon dioxide (CO₂). The CO₂ produced during fermentation may be collected, compressed, and sold as a by-product.

Taxpayer then sends the solution to distillation columns to separate the ethanol from the solids and water. After distillation, part of the output is further processed by dehydration to increase alcohol content by using molecular sieves that separate the remaining water molecules from the ethanol. Once the dehydration is complete, the fuel grade ethanol is blended with 2 to

5 percent denaturant (such as natural gasoline or unleaded gasoline) and sent to storage pending sale.

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

LAW

Statutory Scheme

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

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

The applicable recovery period for purposes of either § 168(a) or § 168(g) is determined by reference to class life or by statute. Section 168(i)(1) provides that the term "class life" means the class life (if any) that would apply to any property as of January 1, 1986, under former § 167(m) as if it were in effect and the taxpayer had made an election under that section. Prior to its revocation, § 167(m) provided that if a taxpayer elected the asset depreciation range system of depreciation, the depreciation deduction would be computed based on the class life prescribed by the Secretary that reasonably reflected the anticipated useful life of that class of property to the industry or other group.

Primary Use Test

Section 1.167(a)-11(b)(4)(iii)(b) of the Income Tax Regulations provides rules for classifying property under former § 167(m) and, under these rules, property

is included in the asset class for the activity for which the property is primarily used (the “primary use” test). Property is classified according to its primary use even though the activity for which the property is primarily used is insubstantial in relation to all the activities of the taxpayer.

Recent appellate decisions discuss the “primary use” standard for asset classification under § 1.167(a)–11(b)(4)(iii)(b). *See, e.g., Clajon Gas Co, L.P. v. Commissioner*, 354 F.3d 786 (8th Cir. 2004). Courts have concluded that the actual purpose and function of an asset determines its asset class (a use-driven functional standard) rather than the terminology used to describe an asset by its owners or others.

Asset Classes

Rev. Proc. 87–56 sets forth the class lives of property that are necessary to compute the depreciation allowance under § 168. This revenue procedure establishes two broad categories of depreciable assets: (1) asset classes 00.11 through 00.4, which consist of specific assets used in all business activities (asset categories); and (2) asset classes 01.1 through 80.0, which consist of assets used in specific business activities (activity categories). The same item of depreciable property may be classified in both an asset category and an activity category, in which case the item is generally classified in the asset category. *See Norwest Corporation & Subsidiaries v. Commissioner*, 111 T.C. 105, 162 (1998).

Asset class 49.5 of Rev. Proc. 87–56, Waste Reduction and Resource Recovery Plants, includes assets used in the conversion of refuse or other solid waste or biomass to heat or to a solid, liquid, or gaseous fuel. This asset class also includes all process plant equipment and structures at the site used to (1) receive, handle, collect, and process refuse or other solid waste or biomass to a solid, liquid, or gaseous fuel or (2) handle and burn refuse or other solid waste or biomass in a waterwall combustion system, oil or gas pyrolysis system, or refuse derived fuel system to create hot water, gas, steam, or electricity. Asset class 49.5 also includes material recovery and support assets used in refuse or solid refuse or solid waste receiving, collecting, handling, sorting, shredding, classifying,

and separation systems. Asset class 49.5 does not include any package boilers, or electric generators and related assets such as electricity, hot water, steam and manufactured gas production plants classified in classes 00.4, 49.13, 49.221 and 49.4 of Rev. Proc. 87–56. Asset class 49.5 includes, however, all other utilities such as water supply and treatment facilities, ash handling and other related land improvements of a waste reduction and resource recovery plant. Assets in class 49.5 have a recovery period of 7 years for purposes of § 168(a) and 10 years for purposes of § 168(g).

Asset class 28.0 of Rev. Proc. 87–56, Manufacture of Chemicals and Allied Products, includes assets used to manufacture basic organic and inorganic chemicals; chemical products to be used in further manufacture, such as synthetic fibers and plastics materials; and finished chemical products. This asset class also includes, among other things, all land improvements associated with plant site or production processes, such as effluent ponds and canals, provided such land improvements are depreciable but does not include buildings and structural components as defined in § 1.48–1(e). Asset class 28.0 does not include assets used in the manufacture of finished rubber and plastic products or in the production of natural gas products, butane, propane, and by-products of natural gas production plants. Assets in class 28.0 have a recovery period of 5 years for purposes of § 168(a) and 9.5 years for purposes of § 168(g).

Rev. Rul. 77–63, 1977–1 C.B. 60, addresses the question of whether assets used to produce alumina are classified in asset class 33.2, Manufacture of Primary Nonferrous Metals, despite the fact that production used chemical processes. The chemical processes were part of the taxpayer’s overall process of producing semi-finished and finished aluminum products from bauxite ore that the taxpayer mined. Asset class 33.2 includes assets used in the smelting, refining, and electrolysis of nonferrous metals from ore. Rev. Rul. 77–63 concludes that the chemical processes used to produce the alumina were an integral part of refining of the nonferrous metal and further concludes that all of the assets used in the processing of the bauxite ore into primary aluminum (basic metal), includ-

ing those used in the chemical processes to produce alumina, are classified in asset class 33.2. However, the revenue ruling provides that assets used to process the alumina for use in activities other than those required to produce the basic metal should be classified in other asset classes.

ANALYSIS

Asset class 49.5 specifically applies to assets used in the conversion of biomass to a liquid fuel. For purposes of asset class 49.5, the term “biomass” means any organic substance other than oil, natural gas, or coal, or product of oil or natural gas or coal. This definition of biomass is consistent with the definition in the energy credit provisions that were enacted near the time asset class 49.5 was first established in 1979 by Rev. Proc. 79–26, 1979–1 C.B. 566. *See* § 48(l)(15)(B)(i), (l)(3)(B) as in effect on the day before the date of enactment [11/5/90] of the Revenue Reconciliation Act of 1990, Pub. L. 101–508. The depreciation and the energy credit provisions are both based on cost recovery concepts.

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

Asset class 28.0 of Rev. Proc. 87–56, which includes assets used to manufacture basic chemicals, is not the appropriate asset class for Taxpayer’s depreciable tangible assets that are used in converting corn to fuel grade ethanol, even though ethanol is an organic chemical. The individual, intermediate processes within Taxpayer’s facility, particularly distillation and dehydration, may be similar or identical to the processing steps that take place in the manufacture of chemicals. However, the mere use of a chemical process in the production of a product does not require an activity to be classified as chemical manufacturing. In Rev. Rul. 77–63, producing alumina by a chemical reaction as a step in the nonferrous metal refining process did not preclude classification in the asset class that specifically applies to manufacturing primary nonferrous metals. Similarly, converting corn, a biomass, to fuel grade ethanol, a liquid fuel, by chemical

processes does not preclude classification in the asset class that specifically applies to the conversion of biomass to fuel.

Further, Taxpayer is primarily engaged in producing fuel grade ethanol (liquid fuel) from corn (biomass) at this facility. Under the “primary use” test of § 1.167(a)–11(b)(4)(iii)(b), Taxpayer’s activity is described in asset class 49.5.

HOLDING

The proper asset class under Rev. Proc. 87–56 for depreciation of tangible assets used in converting corn to fuel grade ethanol is asset class 49.5 (other than § 1250 property not described in asset class 49.5 and assets classified in asset classes 00.11 through 00.4 of Rev. Proc. 87–56).

PROSPECTIVE APPLICATION

Pursuant to § 7805(b)(8), the Internal Revenue Service will not apply the holding in this revenue ruling to tangible assets that are used in converting biomass to a liquid fuel such as fuel grade ethanol that a taxpayer places in service before [INSERT PUBLICATION DATE OF FINAL REVENUE RULING].

DRAFTING INFORMATION

The principal author of this notice is Ruba Nasrallah of the Office of the Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Ms. Nasrallah at (202) 622–4930 (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, § 108.)

Rev. Proc. 2009–37

SECTION 1. PURPOSE

.01 This revenue procedure provides the exclusive procedures for taxpayers to make an election to defer recognizing discharge of indebtedness income (“COD income”) under § 108(i) of the Internal Revenue Code.

.02 This revenue procedure also requires taxpayers making the § 108(i)

election to provide additional information on returns beginning with the taxable year following the taxable year for which the taxpayer makes the election. This revenue procedure describes the time and manner of providing this additional information.

.03 The Internal Revenue Service and Treasury Department intend to issue additional guidance under § 108(i) that may include regulations addressing matters in this revenue procedure. Taxpayers should be aware that these regulations may be retroactive. See § 7805(b)(2). This revenue procedure may be modified to provide procedures consistent with additional guidance.

SECTION 2. BACKGROUND

.01 *Section 108(i), Generally.* Section 108(i) was added to the Code by § 1231 of the American Recovery and Reinvestment Tax Act of 2009, Pub. L. No. 111–5, 123 Stat. 338. In general, § 108(i) provides that, at the election of a taxpayer, COD income realized in connection with a reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument is includible in gross income ratably over a 5-taxable-year inclusion period, beginning with the taxpayer’s fourth or fifth taxable year following the taxable year of the reacquisition. Generally, if a taxpayer makes a § 108(i) election and reacquires (or is treated as reacquiring) the applicable debt instrument generating the COD income for a new debt instrument with original issue discount (“OID”), then interest deductions for this OID also are deferred, as provided in § 108(i)(2). The OID deferral rule, however, does not apply if the amount of OID is less than a *de minimis* amount, as determined under § 1273(a)(3) and § 1.1273–1(d) of the Income Tax Regulations. The OID deferral rule in § 108(i)(2) applies at the entity level for a pass-through entity. For example, a partnership (and therefore its partners) may not deduct currently the OID described in § 108(i)(2)(A)(i). A taxpayer must take into account any item of income or deduction deferred under § 108(i), and not previously taken into account, in the taxable year in which certain events occur (such as the liquidation of the taxpayer and upon other events specified in administrative guidance).

See § 108(i)(5)(D). The rule regarding acceleration of deferred COD income and OID deductions also applies in the case of certain dispositions by persons holding ownership interests in pass-through entities. Section 108(i)(5)(D)(ii). For purposes of § 108(i), regulated investment companies (as defined in § 851(a)) and real estate investment trusts (as defined in § 856(a)) are not pass-through entities.

.02 *Applicable Debt Instrument.* Section 108(i)(3)(A) defines the term “applicable debt instrument” to mean any debt instrument issued by a C corporation or by any other person in connection with the conduct of a trade or business by that person. The term “debt instrument” means any bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness within the meaning of § 1275(a)(1). Section 108(i)(3)(B). For purposes of § 108(i), in the case of an intercompany obligation (as defined in § 1.1502–13(g)(2)(ii)), an applicable debt instrument includes only an instrument for which COD income is realized upon the instrument’s deemed satisfaction under § 1.1502–13(g)(5).

.03 *Reacquisition.* Section 108(i)(4)(A) defines the term “reacquisition” to mean, with respect to any applicable debt instrument, any acquisition of the debt instrument by the debtor that issued (or is otherwise the obligor under) the debt instrument, or a person related to the debtor under § 108(e)(4). The term “acquisition” includes an acquisition of the debt instrument for cash or other property, the exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, the contribution of the debt instrument to capital, and the complete forgiveness of the indebtedness by the holder of the debt instrument. See § 108(i)(4)(B). The term “acquisition” also includes an indirect acquisition within the meaning of § 1.108–2(c) if a direct acquisition of the debt instrument would qualify for an election under § 108(i). For example, if a corporation acquires debt of a partnership that the partnership issued in connection with its trade or business, and the partnership and corporation become related within six months of the corporation’s acquisition of the debt, the indirect

acquisition is an acquisition for which an election under § 108(i) may be made.

.04 *General Requirements for the Section 108(i) Election.* Section 108(i)(5)(B) provides, in general, that a taxpayer makes the § 108(i) election by including a statement that clearly identifies the applicable debt instrument with the return of tax imposed for the taxable year in which the reacquisition of the instrument occurs. (For purposes of this revenue procedure, a return of tax or income tax return includes an information return, and a taxpayer includes a person that files an information return.) The statement must include the amount of income to which § 108(i)(1) applies and other information the Service may prescribe. Once made, a § 108(i) election is irrevocable and, except as provided in section 7 of this revenue procedure, may not be modified.

.05 *Section 108(i) Elections Made by Pass-through Entities.* In the case of COD income realized by a pass-through entity from the reacquisition of an applicable debt instrument, the pass-through entity makes the § 108(i) election. Section 108(i)(5)(B)(iii).

.06 *Additional Information on Subsequent Years' Returns.* Section 108(i)(7) authorizes the Service to issue guidance necessary or appropriate for applying § 108(i), including requiring reporting the election and other information on returns of tax for subsequent taxable years.

.07 *Exclusivity.* Section 108(i)(5)(C) provides that if a taxpayer elects to apply § 108(i) to an applicable debt instrument, § 108(a)(1)(A), (B), (C), and (D) do not apply to COD income deferred under § 108(i).

.08 *Allocation of Deferred COD Income on Partnership Indebtedness.* Section 4.04(3) of this revenue procedure describes how a partnership may elect under § 108(i) to defer a portion of the COD income realized from the reacquisition of an applicable debt instrument. If a partnership elects to defer all or any portion of COD income realized from the reacquisition of an applicable debt instrument, all of the COD income with respect to that debt instrument, without regard to § 108(i), is allocated to the partners in the partnership immediately before the reacquisition in the manner in which the income would be included in the distributive shares of these

partners under § 704 and the regulations thereunder, including § 1.704-1(b)(2)(iii). Each partner's share of this COD income is the partner's COD income amount ("COD income amount"). The partner's COD income amount that is deferred under § 108(i) is the partner's deferred amount ("deferred amount"). The partner's COD income amount that is not deferred and is included in the partner's distributive share of partnership income for the taxable year of the partnership in which the reacquisition occurs is the partner's included amount ("included amount").

.09 *Partner's Deferred § 752 Amount.* A decrease in a partner's share of a partnership liability resulting from the reacquisition of an applicable debt instrument that is not treated as a current distribution of money to the partner under § 752 by reason of § 108(i)(6) is the partner's deferred § 752 amount ("deferred § 752 amount"). A partner's deferred § 752 amount may not exceed the lesser of (i) the partner's deferred amount or (ii) gain that the partner would recognize in the year of reacquisition under § 731 as a result of the reacquisition absent § 108(i)(6). To determine the amount of gain the partner would recognize under clause (ii) of the preceding sentence, the amount of any deemed distribution of money under § 752(b) resulting from the decrease in the partner's share of a reacquired applicable debt instrument that is treated as an advance or draw of money under § 1.731-1(a)(1)(ii) is determined as if no COD income resulting from the reacquisition of the applicable debt instrument is deferred under § 108(i). See Rev. Rul. 92-97, 1992-2 C.B. 124, and Rev. Rul. 94-4, 1994-1 C.B. 195. A partner's deferred § 752 amount is treated as a distribution of money to the partner under § 752 at the same time, and to the extent remaining in the same amount, as the partner recognizes the COD income deferred under § 108(i).

.10 *Allocation of Deferred COD Income on S Corporation Indebtedness.* For purposes of § 108(i), an S corporation's COD income deferred under § 108(i) is shared *pro rata* only among those shareholders that are shareholders of the S corporation immediately before the reacquisition transaction.

.11 *Deferred COD Income, Earnings and Profits, and Alternative Minimum Taxable Income.*

(1) *In general.* The Service and Treasury Department intend to issue regulations regarding the computation of a corporation's earnings and profits with respect to COD income and OID deductions that are deferred under § 108(i). These regulations generally will provide that deferred COD income increases earnings and profits in the taxable year that it is realized and not in the taxable year or years that the deferred COD income is includible in gross income. OID deductions deferred under § 108(i) generally will decrease earnings and profits in the taxable year or years in which the deduction would be allowed without regard to § 108(i). COD income and OID deductions that are deferred increase or decrease adjusted current earnings under § 56(g)(4) in the taxable year or years that the income or deduction is includible or deductible in determining taxable income. See § 1.56(g)-1(c)(1).

(2) *Exceptions for certain special status corporations.* The Service and Treasury Department intend to issue regulations providing that in the case of regulated investment companies and real estate investment trusts, COD income deferred under § 108(i) generally increases earnings and profits in the taxable year or years in which the deferred COD income is includible in gross income and not in the year that the deferred COD income is realized. OID deductions deferred under § 108(i) generally decrease earnings and profits in the taxable year or years that the deferred OID deductions are deductible.

.12 *Extension of Time to Make Election.* Under § 301.9100-1 of the Procedure and Administration Regulations, the Service may grant an extension of time to make a regulatory election. An election is a regulatory election if the due date is prescribed by regulation or other published guidance of general applicability. Section 301.9100-2(a) provides an automatic 12-month extension from the due date for making certain regulatory elections.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that realize COD income from a reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in § 108(i).

SECTION 4. ELECTION PROCEDURES

.01 *In General.*

(1) A taxpayer within the scope of this revenue procedure makes the § 108(i) election by—

(a) Attaching a statement meeting the requirements of section 4.05 of this revenue procedure to the taxpayer's timely filed (including extensions) original federal income tax return for the taxable year in which the reacquisition of the applicable debt instrument occurs, and

(b) If applicable, satisfying the additional requirements of section 4.07, 4.08, 4.09, or 4.10 of this revenue procedure.

(2) The Service grants an automatic extension of 12 months from the due date prescribed in section 4.01(1)(a) of this revenue procedure for making the § 108(i) election. The rules that apply to an automatic extension under § 301.9100-2(a) apply to this automatic extension.

.02 *Section 108(i) Elections Made by Members of Consolidated Groups.* The common parent of a consolidated group makes the § 108(i) election on behalf of all members of the group. See § 1.1502-77(a).

.03 *Aggregation Rule.* A taxpayer within the scope of this revenue procedure may treat two or more applicable debt instruments that are part of the same issue and that are reacquired during the same taxable year as one applicable debt instrument for purposes of this revenue procedure. A pass-through entity may not treat two or more applicable debt instruments as one applicable debt instrument under this section 4.03 if the owners and their ownership interests in the pass-through entity immediately prior to the reacquisition of each applicable debt instrument are not identical.

.04 *Partial Elections.*

(1) A taxpayer within the scope of this revenue procedure may make an election for any portion of COD income realized from the reacquisition of any applicable debt instrument. Thus, for example, if a taxpayer realizes \$100 of COD income from the reacquisition of an applicable debt instrument, the taxpayer may elect under § 108(i)(1) to defer only \$40 of the \$100 of COD income. The taxpayer may exclude from income the portion of COD income that the taxpayer does not elect to

defer under § 108(i) (\$60 in this example) under § 108(a)(1)(A), (B), (C), or (D), if applicable.

(2) A taxpayer is not required to make an election for the same portion of COD income arising from each applicable debt instrument that it reacquires, but may make an election for different portions of COD income arising from different applicable debt instruments (whether or not part of the same issue). Thus, for example, if a taxpayer realizes \$100 of COD income from the reacquisition of an applicable debt instrument (Instrument A) and \$100 of COD income from the reacquisition of a different applicable debt instrument (Instrument B), the taxpayer may elect to defer all or a portion of the COD income associated with Instrument A and none or a different portion of the COD income associated with Instrument B.

(3) A partnership that elects to defer less than all of the COD income realized from the reacquisition of an applicable debt instrument may determine, in any manner, the portion, if any, of a partner's COD income amount that is the partner's deferred amount and the portion, if any, of a partner's COD income amount that is the partner's included amount. Thus, for example, one partner's deferred amount may be zero while another partner's deferred amount may equal that partner's COD income amount (or any portion thereof). A partner may exclude from income the partner's included amount under § 108(a)(1)(A), (B), (C), or (D), if applicable. The provisions of this section 4.04(3) apply for purposes of § 108(i) only and are not intended as an interpretation of or a change to existing law under § 704.

.05 *Contents of Election Statement.* A statement meets the requirements of this section 4.05 if the statement—

(1) *Label.* States "Section 108(i) Election" across the top.

(2) *Required information.* Provides, for each applicable debt instrument the reacquisition of which generates COD income that the taxpayer is electing to defer under § 108(i)—

(a) The name and taxpayer identification numbers, if any, of the issuer or issuers of the applicable debt instrument;

(b) A general description of the applicable debt instrument (including the issue and maturity dates) and, in the case of any person other than a C corporation, a gen-

eral description of the person's trade or business to which the applicable debt instrument is connected;

(c) A general description of the reacquisition transaction or transactions generating the COD income (including the date(s) of the transaction(s));

(d) The total amount of COD income for the applicable debt instrument that results from the reacquisition (in the case of a partnership, the aggregate of the partners' COD income amounts) and a general description of the manner in which this amount is calculated;

(e) The amount of COD income for the applicable debt instrument that the taxpayer is electing to defer under § 108(i);

(f) In the case of a partnership, a list of partners that have a deferred amount, their identifying information and each partner's deferred amount; and in the case of an S corporation, a list of shareholders with COD income deferred under § 108(i), their identifying information and each shareholder's share of the S corporation's deferred COD income; and

(g) In cases in which a new debt instrument is issued or deemed issued in exchange for the applicable debt instrument (including exchanges under § 108(e)(4), § 108(i)(2)(B), and § 1.1001-3), the issuer's name, the issuer's taxpayer identification number, if any, a general description of the new debt instrument and whether the new debt instrument has OID, and if the new debt instrument has OID, a schedule of the OID that the issuer expects to accrue each taxable year on the instrument and the amount of OID that the issuer expects to defer under § 108(i)(2) each taxable year.

.06 *Supplemental information.* The statement described in section 4.05 of this revenue procedure may specify for each applicable debt instrument an amount greater than the amount identified in section 4.05(2)(e) of this revenue procedure that the taxpayer elects to defer under § 108(i) in the event the Service subsequently concludes that the taxpayer understated the amount of COD income described in section 4.05(2)(d) of this revenue procedure. This additional amount of COD income the taxpayer elects to defer may be described as the entire additional COD income, or as a percentage of any additional COD income. If the taxpayer is a partnership, the partnership must specify each partner's share of the partnership's

additional COD income that would be deferred (the partner's additional deferred amount), which the partnership may describe for each partner as the partner's entire share of the partnership's additional COD income or as a percentage of the partner's share of the partnership's additional COD income. If the taxpayer is an S corporation, the S corporation must specify each shareholder's share of the S corporation's additional COD income that would be deferred, which the S corporation may describe for each shareholder as the shareholder's entire share of the S corporation's additional COD income or as a percentage of the shareholder's share of the S corporation's additional COD income. In the case of partnerships and S corporations, the additional COD income and the portion of additional COD income that would be deferred are allocated or determined as provided in sections 2.08, 2.10 and, if applicable, 4.04(3) of this revenue procedure, respectively, as if the additional COD income was realized.

.07 Additional Requirements for Certain Partnerships Making a § 108(i) Election. The rules of this section 4.07 apply to partnerships other than partnerships described in section 4.10 of this revenue procedure.

(1) *Information filing on Schedule K-1 (Form 1065 and Form 1065-B).* For the taxable year in which the § 108(i) election is made, the partnership must report on the Schedule K-1 (Form 1065 or Form 1065-B), *Partner's Share of Income, Deductions, Credits, etc.*, in the manner specified in the instructions to the forms, for each partner § 108(i) information on an aggregate basis for all applicable debt instruments for which a § 108(i) election is made. Partnerships reporting § 108(i) information on the 2008 Schedule K-1 (Form 1065 or Form 1065-B) must report for each partner on an aggregate basis for all applicable debt instruments for which a § 108(i) election is made:

(a) The partner's deferred amount that the partner must include in income in the current taxable year under § 108(i)(1) or § 108(i)(5)(D)(i) or (ii), in box 11 ("other income") using code F for Schedule K-1 (Form 1065) or in box 9 ("other") using code U for Schedule K-1 (Form 1065-B);

(b) The partner's share of the partnership's OID deduction deferred under

§ 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(2)(A)(ii) or § 108(i)(5)(D)(i) or (ii), in box 13 ("other deductions") using code W for Schedule K-1 (Form 1065) or in box 9 ("other") using code U for Schedule K-1 (Form 1065-B);

(c) The partner's deferred amount that has not been included in income in the current or prior taxable years, in box 20 ("other information") using code X for Schedule K-1 (Form 1065) or in box 9 ("other") using code U for Schedule K-1 (Form 1065-B);

(d) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) that has not been deducted in the current or prior taxable years, in box 20 ("other information") using code X for Schedule K-1 (Form 1065) or in box 9 ("other") using code U for Schedule K-1 (Form 1065-B);

(e) The partner's deferred § 752 amount that is treated as a distribution of money to the partner under § 752 in the current taxable year, in box 20 ("other information") using code X for Schedule K-1 (Form 1065) or in box 9 ("other") using code U for Schedule K-1 (Form 1065-B); and

(f) The partner's deferred § 752 amount remaining as of the end of the current taxable year, in box 20 ("other information") using code X for Schedule K-1 (Form 1065) or in box 9 ("other") using code U for Schedule K-1 (Form 1065-B).

(2) *Election information statement provided to partners.* The partnership must attach to the Schedule K-1 (Form 1065 or Form 1065-B) provided to each partner for the taxable year in which the § 108(i) election is made a statement satisfying the requirements of this section 4.07(2). The partnership should not attach these statements to the Schedules K-1 that are filed with the Service, but must retain these statements, and each partner must retain that partner's statement, in their respective books and records. A statement meets the requirements of this section 4.07(2) if the statement—

(a) *Label.* States "Section 108(i) Election Information Statement for Partners" across the top.

(b) *Required information.* Clearly identifies for each applicable debt instrument to which an election under § 108(i) applies—

(i) The partner's COD income amount, the partner's deferred amount, and the partner's included amount;

(ii) The partner's deferred amount that the partner must include in income in the current taxable year under § 108(i)(5)(D)(i) or (ii);

(iii) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) in the current taxable year;

(iv) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(5)(D)(i) or (ii);

(v) The partner's share of each liability of the partnership described in section 4.05(2)(g) of this revenue procedure;

(vi) The partner's share of the decrease in the partnership liability that results from the reacquisition of the applicable debt instrument;

(vii) The partner's share of the decrease in the partnership liability that results from the reacquisition of the applicable debt instrument that is treated as a distribution of money to the partner under § 752 in the current taxable year;

(viii) The partner's deferred § 752 amount as described in section 2.09 of this revenue procedure;

(ix) The partner's additional deferred amount as described in section 4.06 of this revenue procedure; and

(x) The date of the reacquisition transaction generating the COD income.

(c) If a partner fails to provide the written statement required by section 4.07(3) of this revenue procedure, the partnership must indicate that the amounts described in section 4.07(2)(b)(vii) and (viii) of this revenue procedure cannot be calculated because the partner did not provide the information necessary to report these amounts.

(3) *Partner reporting requirements.* The partnership must make reasonable efforts prior to making a § 108(i) election to secure from each partner with a deferred amount for which it does not have the information necessary to compute the partner's basis in its partnership interest (and its deferred § 752 amount as described in section 2.09 of this revenue procedure) a written statement signed under penalties of perjury that includes this information. Each partner with a deferred

amount must provide this written statement to the partnership within 30 days of the date of request by the partnership. A partner's failure to comply with this reporting requirement does not invalidate the partnership's election under § 108(i) for an applicable debt instrument only if the partnership makes reasonable efforts before making the § 108(i) election to obtain the written statement from the partner and otherwise complies with the requirements of section 4 of this revenue procedure. If a partner provides its written statement under this section 4.07(3) after the partnership has provided to the partner the Section 108(i) Election Information Statement for Partners, the partnership must provide to the partner a revised Section 108(i) Election Information Statement for Partners reporting the information required under section 4.07(2)(b)(vii) and (viii) of this revenue procedure and report the partner's deferred § 752 amount on the partner's Schedule K-1 (Form 1065 or Form 1065-B) in subsequent taxable years.

.08 Additional Requirements for an S Corporation Making a § 108(i) Election.

(1) *Information filing on Schedule K-1 (Form 1120S).* For the taxable year in which the § 108(i) election is made, the S corporation must report on the Schedule K-1 (Form 1120S), *Shareholder's Share of Income, Deductions, Credits, etc.*, in the manner specified in the instructions to the forms, for each shareholder § 108(i) information on an aggregate basis for all applicable debt instruments for which a § 108(i) election is made. S corporations reporting § 108(i) information on the 2008 Schedule K-1 (Form 1120S) must report for each shareholder, on an aggregate basis for all applicable debt instruments for which a § 108(i) election is made, the shareholder's share of the S corporation's:

(a) COD income deferred under § 108(i) that the shareholder must include in income in the current taxable year under § 108(i)(1) or § 108(i)(5)(D)(i) or (ii), in box 10 ("other income") using code E;

(b) OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(2)(A)(ii), or § 108(i)(5)(D)(i) or (ii), in box 12 ("other deductions") using code S;

(c) COD income deferred under § 108(i) that has not been included in in-

come in the current or prior taxable years, in box 17 ("other information") using code T; and

(d) OID deduction deferred under § 108(i)(2)(A)(i) that has not been deducted in the current or prior taxable years, in box 17 ("other information") using code T.

(2) *Election information statement provided to shareholders.* The S corporation must attach to the Schedule K-1 (Form 1120S) provided to each shareholder for the taxable year in which the § 108(i) election is made, a statement satisfying the requirements of this section 4.08(2). The S corporation should not attach these statements to the Schedules K-1 that are filed with the Service, but must retain these statements, and each shareholder must retain that shareholder's statement, in their respective books and records. A statement meets the requirements of this section 4.08(2) if the statement—

(a) *Label.* States "Section 108(i) Election Information Statement for Shareholders" across the top.

(b) *Required information.* Clearly identifies for each applicable debt instrument to which an election under § 108(i) applies, the shareholder's share of the S corporation's—

(i) COD income that the S corporation elects to defer under § 108(i);

(ii) COD income deferred under § 108(i) that the shareholder must include in income in the current taxable year under § 108(i)(5)(D)(i) or (ii);

(iii) OID deduction deferred under § 108(i)(2)(A)(i) in the current taxable year;

(iv) OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(5)(D)(i) or (ii); and

(v) Additional COD income that would be deferred as described in section 4.06 of this revenue procedure.

.09 *Section 108(i) Elections Made on Behalf of Certain Foreign Corporations.* The controlling domestic shareholder(s) (or common parent of the controlling domestic shareholder(s), if applicable) of a controlled foreign corporation or a noncontrolled § 902 corporation not otherwise required to file a return of tax may make the § 108(i) election on behalf of the foreign corporation by satisfying the requirements of § 1.964-1(c)(3). Each con-

trolling domestic shareholder must attach a statement identifying the foreign corporation and satisfying the requirements of section 4.05 of this revenue procedure and, if applicable, section 4.06 of this revenue procedure, to its federal income tax return for the taxable year ending within or with the taxable year of the foreign corporation for which the § 108(i) election is made.

.10 *Section 108(i) Elections Made By Certain Foreign Partnerships.* The rules of this section 4.10 apply to a foreign partnership making a § 108(i) election that is not otherwise required to file a federal partnership return ("nonfiling foreign partnership"). See § 1.6031(a)-1(b).

(1) A nonfiling foreign partnership making the election must attach a statement satisfying the requirements of section 4.05 of this revenue procedure and, if applicable, section 4.06 of this revenue procedure, to a partnership return satisfying the requirements of § 1.6031(a)-1(b)(5) it files with the Service. In addition, a nonfiling foreign partnership must include in the information required in section 4.05(2)(d) and (e) of this revenue procedure the aggregate amounts for all partners as well as the aggregate amounts for all U.S. persons (as defined in § 7701(a)(30)) and controlled foreign corporation(s) that are partners with deferred amounts in the nonfiling foreign partnership ("affected partners").

(2) The nonfiling foreign partnership must make the election, in accordance with § 1.6031(a)-1(b)(5), by the date provided in section 4.01(1)(a) of this revenue procedure, as if it had a filing obligation for the taxable year in which the reacquisition of the applicable debt instrument occurs.

(3) For each affected partner, the partnership must file with the Service a Schedule K-1 (Form 1065) and report on the Schedule K-1 (Form 1065) for the affected partner as provided in section 4.07(1) of this revenue procedure. Except for this § 108(i) information, the partnership need not complete Part III of the Schedule K-1 (Form 1065). The partnership must provide a copy of the respective Schedule K-1 (Form 1065) to each affected partner and must also attach to the Schedule K-1 (Form 1065) provided to each affected partner a statement satisfying the requirements of section 4.07(2) of this revenue procedure by the date provided in section 4.01(1)(a) of this revenue proce-

ture. The partnership should not attach any statement described in section 4.07(2) of this revenue procedure to the Schedules K-1 that are filed with the Service. However, the partnership must retain the statements provided to the affected partners, and each affected partner must retain that partner's statement, in their respective books and records.

(4) The partnership and each affected partner must satisfy the requirements of section 4.07(3) of this revenue procedure.

.11 *Protective § 108(i) Election.*

(1) *In general.* A taxpayer may make a protective election under § 108(i) for an applicable debt instrument if the taxpayer concludes that a particular transaction does not result in the realization of COD income, reports the transaction on its federal income tax return in a manner consistent with the taxpayer's conclusion, and would be within the scope of this revenue procedure if the taxpayer's conclusion were incorrect. If the Service at any time determines the taxpayer's conclusion that the particular transaction does not result in the realization of COD income is incorrect, the taxpayer's protective election is treated as a valid, irrevocable election under § 108(i). Thus, if a taxpayer makes a protective election, the Service subsequently may require the taxpayer to report COD income deferred pursuant to the valid and irrevocable protective election even if the statute of limitations has expired for the year in which the COD income was realized and the protective election was made. A taxpayer makes a protective election by attaching a statement satisfying the requirements of this section 4.11(1) to the taxpayer's original federal income tax return within the period described in section 4.01(1)(a) of this revenue procedure. The taxpayer also must attach the election to its federal income tax return in each of the 8 or 9 taxable years, as applicable, following the taxable year of the election. A statement meets the requirements of this section 4.11(1) if the statement—

(a) States "Section 108(i) Protective Election" across the top;

(b) Provides the information required under section 4.05(2)(a), (b), and (c) of this revenue procedure;

(c) Provides that the amounts described in sections 4.05(2)(d) and (e) of this revenue procedure are zero; and

(d) Provides the information described in section 4.06 of this revenue procedure.

(2) *Statements provided to shareholders and partners.*

(a) For each applicable debt instrument, a partnership or S corporation that makes a protective election must attach to the Schedule K-1 (Form 1065, Form 1065-B, or Form 1120S) it provides each of its partners or shareholders, as the case may be, for the taxable year in which the protective election is made a statement containing the information described in section 4.11(1)(b) of this revenue procedure (an S corporation need not provide its shareholders with the date(s) of the transaction(s) that would constitute the reacquisition transaction or transactions) and the partner's or shareholder's share of the additional COD income that would be deferred as described in section 4.11(1)(d) of this revenue procedure.

(b) The partnership or S corporation should not attach the statements described in this section 4.11(2) to the Schedules K-1 that are filed with the Service but must retain these statements, and each partner and shareholder must retain that partner's or shareholder's statement, in their respective books and records.

.12 *Election-Year Reporting by Tiered Pass-Through Entities.*

(1) A partnership required to file a U.S. partnership return other than under § 1.6031(a)-1(b)(5), or an S corporation, that receives a Schedule K-1 (Form 1065 or Form 1065-B) reflecting its share of any items listed in section 4.07(1) of this revenue procedure, must report on the Schedules K-1 (Form 1065, Form 1065-B, or Form 1120S) to its partners or shareholders, as the case may be, each partner's or shareholder's share of those items (an S corporation only reports to its shareholders the items described in section 4.07(1)(a) through (d) of this revenue procedure).

(2) If a partnership described in section 4.12(1) of this revenue procedure receives a statement described in sections 4.07(2) or 4.10(3) of this revenue procedure or this section 4.12(2), it must provide each of its partners a statement containing the partner's share of each of the items listed on each statement received by the partnership, including the information described in section 4.07(2)(b)(x) of this revenue procedure. If an S corporation

receives a statement described in sections 4.07(2) or 4.10(3) of this revenue procedure or this section 4.12(2), it must provide each of its shareholders a statement containing the shareholder's share of each of the items listed on each statement received by the S corporation that are described in section 4.07(2)(b)(i), (ii), (iii), (iv) and (ix) of this revenue procedure. The partnership or S corporation must attach this statement or statements to the Schedule K-1 (Form 1065, Form 1065-B, or Form 1120S) that it provides to each of its partners or shareholders, as the case may be, for the taxable year of the partnership or S corporation. The partnership or S corporation should not attach these statements to the Schedules K-1 that are filed with the Service but must retain these statements, and each partner and shareholder must retain that partner's or shareholder's statement, in their respective books and records.

(3) A partnership that receives a statement described in this section 4 identifying its COD income amount with respect to an applicable debt instrument must allocate its COD income amount, without regard to § 108(i), to the partners in the partnership immediately before the reacquisition transaction in the manner in which the income would be included in the distributive shares of these partners under § 704 and the regulations thereunder, including § 1.704-1(b)(2)(iii). The partnership may determine in any manner the portion, if any, of a partner's COD income amount that is the partner's deferred amount and the portion, if any, of a partner's COD income amount that is the partner's included amount. No partner's deferred amount with respect to an applicable debt instrument may exceed its COD income amount with respect to the applicable debt instrument, and the aggregate of deferred amounts of its partners with respect to an applicable debt instrument must equal the partnership's deferred amount with respect to the applicable debt instrument. The partnership allocates amounts described in section 4.06 of this revenue procedure under this section 4.12(3) as if the additional COD income was realized.

(4) The deferred § 752 amount for partners in a partnership making a § 108(i) election is calculated only for the partnership's direct partners. No further adjustment to the deferred § 752 amount is made to reflect the basis or other attributes of

partners that are indirect partners in the partnership.

(5) If an S corporation receives a statement described in this section 4 identifying its COD income amount, deferred amount, included amount or additional COD income that would be deferred with respect to an applicable debt instrument, these amounts are shared *pro rata* only among those shareholders that are shareholders in the S corporation immediately before the reacquisition transaction.

(6) This paragraph 4.12(6) provides the rules for Category 1 and Category 2 filers of Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, as defined in the instructions for Form 8865, if the foreign partnership, for which the Category 1 or Category 2 filer has a filing requirement, receives a Schedule K-1 (Form 1065 or Form 1065-B) reflecting the partnership's share of any items listed in section 4.07(1) of this revenue procedure, or a statement described in sections 4.07(2) or 4.10(3) of this revenue procedure (because the foreign partnership owns an interest directly or indirectly in another partnership in which an election was made under § 108(i) with respect to that foreign partnership's distributive share from the other entity).

(a) For each partner for whom the Category 1 filer is required to complete a Schedule K-1 (Form 8865) (which includes the Category 1 filer itself), the Category 1 filer must:

(i) Include the information described in section 4.07(1) of this revenue procedure in the Schedule K-1 (Form 8865) that the Category 1 filer files with the Service and completes for the partner;

(ii) Produce a statement containing the partner's share of the items listed on each statement received by the partnership; and

(iii) Attach the statement described in section 4.12(6)(a)(ii) of this revenue procedure to each Schedule K-1 (Form 8865) that it is required to provide to a partner of the foreign partnership.

(b) A Category 2 filer must include its share of the information described in section 4.07(1) on the Schedule K-1 (Form 8865) that it is required to complete. Category 2 filers also must complete a statement containing their share of the items listed on each statement received by the partnership.

(c) The Category 1 and Category 2 filers should not attach the statements described in sections 4.12(6)(a)(ii) and 4.12(6)(b) of this revenue procedure, respectively, to the Schedules K-1 that are filed with the Service. However, Category 1 filers must retain the statements they complete and each partner must retain its own statement, in their respective books and records.

(7) If as a result of § 108(i)(5)(D)(ii), a partner of a partnership described in section 4.12(1) of this revenue procedure or a shareholder of an S corporation described in section 4.12(1) of this revenue procedure must recognize items deferred under § 108(i), the partnership or S corporation must report these items on the Schedule K-1 (Form 1065, Form 1065-B, or Form 1120S) and statements provided to the partner or shareholder pursuant to section 4.12(1) and (2) of this revenue procedure. Similar rules apply to Category 1 and Category 2 filers (Form 8865) described in section 4.12(6) of this revenue procedure.

(8) The provisions of section 4.12(2), (3), (5) and (6) of this revenue procedure also apply to a statement received that is described in section 4.11(2) of this revenue procedure, except that the information that must be provided are those items described in section 4.11(1)(b) of this revenue procedure (an S corporation need not provide its shareholders with the date(s) of the transaction(s) that would constitute the reacquisition transaction or transactions) and the share of the partner or shareholder in the amounts described in section 4.11(1)(d) of this revenue procedure.

SECTION 5. REQUIRED INFORMATION STATEMENT

.01 *Annual Information Statements.* Pursuant to § 108(i)(7)(B), a taxpayer that makes an election under § 108(i) (except for a protective election under section 4.11(1) of this revenue procedure) must attach a statement meeting the requirements of section 5.02 of this revenue procedure to its federal income tax return for each taxable year beginning with the taxable year following the taxable year for which the taxpayer makes the election and ending with the first taxable year in which all items deferred under § 108(i) have been recognized.

.02 *Contents of Statement.* A statement meets the requirements of this section 5.02 if the statement—

(1) *Label.* States "Section 108(i) Information Statement" across the top;

(2) *Required information.* Clearly identifies for each applicable debt instrument to which an election under § 108(i) applies—

(a) COD income deferred under § 108(i) that is included in income in the current taxable year under § 108(i)(1);

(b) COD income deferred under § 108(i) that is included in income in the current taxable year under § 108(i)(5)(D), including a description and date of the acceleration event described in § 108(i)(5)(D);

(c) COD income deferred under § 108(i) that has not been included in income in the current or prior taxable years (in the case of a partnership, the aggregate of the partners' deferred amounts that have not been included in income in the current or prior taxable years, and in the case of an S corporation, the S corporation's COD income deferred under § 108(i) that has not been included in income in the current or prior taxable years);

(d) OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(2)(A)(ii);

(e) OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(5)(D); and

(f) OID deduction deferred under § 108(i)(2)(A)(i) that has not been deducted in the current or prior taxable years.

(3) *Election attached.* Includes a copy of the election statement described in section 4.05 of this revenue procedure.

.03 *Additional Annual Reporting Requirements for Certain Partnerships.* The rules of this section 5.03 apply to partnerships other than partnerships described in section 5.05 of this revenue procedure.

(1) *In general.* A partnership that makes an election under § 108(i) (except for a protective election under section 4.11(1) of this revenue procedure) must attach to its federal income tax returns the statements required under section 5.01 of this revenue procedure. In addition, for each taxable year in which a statement is required under section 5.01 of this revenue procedure, the partnership must report on

the Schedule K-1 (Form 1065 or Form 1065-B) for each partner § 108(i) information in the manner described in section 4.07(1) of this revenue procedure.

(2) *Annual information statements provided to partners.* The partnership must attach to the Schedule K-1 (Form 1065) provided to each partner for each taxable year in which a statement is required under section 5.01 of this revenue procedure, a statement meeting the requirements of this section 5.03(2). The partnership should not attach these statements to the Schedules K-1 that are filed with the Service, but must retain these statements, and each partner must retain that partner's statement, in their respective books and records. A statement meets the requirements of this section 5.03(2) if the statement—

(a) *Label.* States "Section 108(i) Annual Information Statement for Partners" across the top of the statement.

(b) *Required information.* Clearly identifies for each applicable debt instrument to which a § 108(i) election applies—

(i) The partner's deferred amount that has not been included in income as of the end of the prior taxable year;

(ii) The partner's deferred amount that the partner must include in income in the current taxable year under § 108(i)(1);

(iii) The partner's deferred amount that the partner must include in income in the current taxable year under § 108(i)(5)(D)(i) or (ii);

(iv) The partner's deferred amount that has not been included in income in the current or prior taxable years;

(v) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) in the current taxable year;

(vi) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(2)(A)(ii);

(vii) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(5)(D)(i) or (ii);

(viii) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) that has not been deducted in the current or prior taxable years; and

(ix) The partner's deferred § 752 amount that is treated as a distribution of money to the partner under § 752 in the current taxable year and any remaining deferred § 752 amount. If a partner fails to provide the written statement required by section 4.07(3) of this revenue procedure, the partnership must indicate that the amounts described in this section 5.03(2)(b)(ix) cannot be calculated because the partner did not provide the information necessary to report these amounts.

.04 Additional Annual Reporting Requirements for an S Corporation.

(1) *In general.* An S corporation that makes an election under § 108(i) (except for a protective election under section 4.11(1) of this revenue procedure) must attach to its federal income tax returns the statements required under section 5.01 of this revenue procedure. In addition, for each taxable year in which a statement is required under section 5.01 of this revenue procedure, the S corporation must report on the Schedule K-1 (Form 1120S) for each shareholder § 108(i) information in the manner described in section 4.08(1) of this revenue procedure.

(2) *Annual information statements provided to shareholders.* The S corporation must attach to the Schedule K-1 (Form 1120S) provided to each shareholder for each taxable year in which a statement is required under section 5.01 of this revenue procedure a statement meeting the requirements of this section 5.04(2). The S corporation should not attach these statements to the Schedules K-1 that are filed with the Service, but must retain these statements, and each shareholder must retain that shareholder's statement, in their respective books and records. A statement meets the requirements of this section 5.04(2) if the statement—

(a) *Label.* States "Section 108(i) Annual Information Statement for Shareholders" across the top;

(b) *Required information.* Clearly identifies for each applicable debt instrument to which an election under § 108(i) applies, the shareholder's share of the S corporation's—

(i) COD income deferred under § 108(i) that has not been included in income as of the end of the prior taxable year;

(ii) COD income deferred under § 108(i) that the shareholder must include

in income in the current taxable year under § 108(i)(1);

(iii) COD income deferred under § 108(i) that the shareholder must include in income in the current taxable year under § 108(i)(5)(D)(i) or (ii);

(iv) COD income deferred under § 108(i) that has not been included in income in the current or prior taxable years;

(v) OID deduction deferred under § 108(i)(2)(A)(i) in the current taxable year;

(vi) OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(2)(A)(ii);

(vii) OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(5)(D)(i) or (ii); and

(viii) OID deduction deferred under § 108(i)(2)(A)(i) that has not been deducted in the current or prior taxable years.

.05 Additional Annual Reporting Requirements for Certain Foreign Partnerships.

(1) The rules of this section 5.05 apply to nonfiling foreign partnerships.

(2) A nonfiling foreign partnership that makes an election under § 108(i) (except for a protective election under section 4.11(1) of this revenue procedure) must file federal income tax returns with the Service containing the information under § 1.6031(a)-1(b)(5) for each taxable year in which a statement is required by section 5.01 of this revenue procedure.

(3) The nonfiling foreign partnership must attach to its federal income tax returns the statements required under section 5.01 of this revenue procedure, but only for that portion of the COD income allocated to affected partners.

(4) For each taxable year in which a statement is required under section 5.01 of this revenue procedure, the nonfiling foreign partnership must provide each affected partner a Schedule K-1 (Form 1065) reporting § 108(i) information in the manner described in section 4.07(1) of this revenue procedure. Except for this § 108(i) information, the partnership need not complete Part III of the Schedule K-1 (Form 1065). The partnership must provide each affected partner with a copy of the Schedule K-1 (Form 1065) by the date provided in § 1.6031(b)-1T(b). The partnership must attach the Schedules K-1

(Form 1065) to the federal income tax returns filed with the Service pursuant to section 5.05(2) of this revenue procedure.

(5) For each taxable year for which a statement is required under section 5.01 of this revenue procedure, the nonfiling foreign partnership must attach to each affected partner's Schedule K-1 (Form 1065) a statement meeting the requirements of section 5.03(2) of this revenue procedure. The partnership should not attach these statements to the Schedules K-1 that are filed with the Service, but must retain the statements, and each partner must retain that partner's statement, in their respective books and records.

.06 *Information Statements Made on Behalf of Certain Foreign Corporations.* Each controlling domestic shareholder must attach a statement identifying the foreign corporation and meeting the requirements of section 5.02 of this revenue procedure to the shareholder's federal income tax return for each taxable year for which a statement is required under section 5.01 of this revenue procedure.

.07 *Additional Annual Reporting Requirements for Tiered Pass-Through Entities.*

(1) A partnership required to file a U.S. partnership return other than under § 1.6031(a)-1(b)(5), or an S corporation, that receives a Schedule K-1 (Form 1065 or Form 1065-B) described in the second sentence of section 5.03(1) of this revenue procedure reflecting its share of any § 108(i) information must report on the Schedules K-1 (Form 1065, Form 1065-B, or Form 1120S) to its partners or shareholders, as the case may be, each partner's or shareholder's share of those items (an S corporation only reports to its shareholders the items described in section 4.07(1)(a) through (d) of this revenue procedure).

(2) If a partnership described in section 5.07(1) of this revenue procedure receives a statement described in sections 5.03(2) or 5.05(5) of this revenue procedure or this section 5.07(2), it must provide each of its partners a statement containing the partner's share of each of the items listed on each statement received by the partnership. If an S corporation receives a statement described in sections 5.03(2) or 5.05(5) of this revenue procedure or this section 5.07(2), it must provide each of its shareholders a statement contain-

ing the shareholder's share of each of the items listed on each statement received by the S corporation that are described in section 5.03(2)(b)(i) through (viii) of this revenue procedure. The partnership or S corporation must attach the statement or statements to the Schedule K-1 (Form 1065 or Form 1065-B) or Schedule K-1 (Form 1120S) that is provided to each of its partners or shareholders, as the case may be, for the taxable year of the partnership or S corporation. The partnership or S corporation should not attach these statements to the Schedules K-1 that are filed with the Service, but must retain these statements, and each partner and shareholder must retain that partner's or shareholder's statement, in their respective books and records.

(3) This paragraph 5.07(3) provides the rules for persons described in section 4.12(6) of this revenue procedure if the foreign partnership, for which the Category 1 or 2 filer has a filing requirement, receives a Schedule K-1 (Form 1065 or Form 1065-B) reflecting the partnership's share of any items described in the second sentence of section 5.03(1) of this revenue procedure, or a statement described in sections 5.03(2) or 5.05(5) of this revenue procedure (because the foreign partnership owns an interest directly or indirectly in another partnership in which an election was made under § 108(i) with respect to that foreign partnership's distributive share from the other entity).

(a) For each partner for whom the Category 1 filer is required to complete a Schedule K-1 (Form 8865) (which includes the Category 1 filer itself), the Category 1 filer must:

(i) Include the information described in section 4.07(1) of this revenue procedure in the Schedule K-1 (Form 8865) that the Category 1 filer files with the Service and completes for the partner;

(ii) Produce a statement containing the partner's share of the items listed on each statement received by the partnership; and

(iii) Attach the statement described in section 5.07(3)(a)(ii) of this revenue procedure to each Schedule K-1 (Form 8865) that it is required to provide to a partner of the foreign partnership.

(b) A Category 2 filer must include its share of the information described in section 4.07(1) on the Schedule K-1 (Form 8865) that it is required to complete. Cat-

egory 2 filers also must complete a statement containing their share of the items listed on each statement received by the partnership.

(c) The Category 1 and Category 2 filers should not attach the statements described in sections 5.07(3)(a)(ii) and 5.07(3)(b) of this revenue procedure, respectively, to the Schedules K-1 that are filed with the Service. However, Category 1 filers must retain the statements they complete and each partner must retain its own statement, in their respective books and records.

(4) If as a result of § 108(i)(5)(D)(ii), a partner of a partnership described in section 5.07(1) of this revenue procedure or a shareholder of an S corporation described in section 5.07(1) of this revenue procedure must recognize items deferred under § 108(i), the partnership or S corporation must report these items on the Schedule K-1 (Form 1065, Form 1065-B, or Form 1120S) and statements provided to the partner or shareholder pursuant to section 5.07(1) and (2) of this revenue procedure. Similar rules apply to Category 1 and Category 2 filers (Form 8865) described in section 4.12(6) of this revenue procedure.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for reacquisitions of applicable debt instruments in taxable years ending after December 31, 2008.

SECTION 7. TRANSITION RULE

.01 *Noncomplying Election.* Except as otherwise provided in this section 7.01, the Service will treat a § 108(i) election as effective if a taxpayer files an election with the taxpayer's federal income tax return filed on or before September 16, 2009, using any reasonable procedure to make the election. However, an election that does not comply with section 4 of this revenue procedure will not be effective unless the taxpayer on or before November 16, 2009, files an amended return for the taxable year of the election and complies with the requirements of section 4 of this revenue procedure.

.02 *Modification of Election.* A taxpayer that files a § 108(i) election on or before September 16, 2009, may modify that election by filing an amended return on or before November 16, 2009 (for ex-

ample, to modify the amount of COD income the taxpayer elects to defer). To be effective, a modification of an election described in the preceding sentence must satisfy the requirements for an election described in section 4 of this revenue procedure.

.03 *Notations.* A taxpayer that files the amended return on paper must write “Section 108(i) Election” on the top of the first page. A taxpayer that files the amended return electronically should indicate “Section 108(i) Election” on the return. See Publication 4163, *Modernized e-File (MeF) Information for Authorized IRS e-file Providers for Business Returns Tax Year 2008* for more details.

SECTION 8. 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 1545–2147.

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 revenue procedure is in sections 4, 5 and 7. This information is required to determine the amount of income and deductions a taxpayer elects to defer and to track those amounts until the taxpayer has reported all deferred income and deductions on the taxpayer’s tax return. This information will be used during examination to verify that a taxpayer has correctly deferred income and deductions. The collection of information is required to obtain a benefit. The likely respondents are C corporations, shareholders of S corporations, partners of partnerships, and other individuals engaged in a trade or business, that reacquire applicable debt instruments in 2009 or 2010.

The estimated total annual reporting burden is 300,000 hours. The estimated annual burden per respondent varies from 1 to 8 hours, depending on individual circumstances, with an estimated average of 6 hours. The estimated number of respondents is 50,000.

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 return information are confidential, as required by § 6103.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Megan A. Stoner of the Office of Associate Chief Counsel (Passthroughs & Special Industries) and Craig Wojay of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Megan A. Stoner at (202) 622–3070 for questions involving partnerships and S corporations, William E. Blanchard at (202) 622–3950 for questions involving OID, Ronald M. Gootzeit at (202) 622–3860 for questions involving foreign entities, Robert Rhyne at (202) 622–7790 for questions involving earnings and profits and consolidated groups, and Craig Wojay at (202) 622–4920 for questions on § 108(i) generally (not toll-free calls).

Part IV. Items of General Interest

Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2009-64

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not

precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on September 8, 2009 and would end on the date the court first determines that the organization is not de-

scribed in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

HFZ Charitable Supporting Organization
Santa Barbara, CA
Main Homes Community Development Corporation
Columbus, OH
North American Housing Foundation
Spokane, WA
The Valcarce Foundation
Bountiful, UT

Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

Announcement 2009-65

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

The disciplinary sanctions to be imposed for violation of the regulations are:

Disbarred from practice before the IRS—An individual who is disbarred is not eligible to represent taxpayers before the IRS.

Suspended from practice before the IRS—An individual who is suspended is not eligible to represent taxpayers before the IRS during the term of the suspension.

Censured in practice before the IRS—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to represent taxpayers before the IRS, but OPR may subject the individual's future representations to conditions designed to promote high standards of conduct.

Monetary penalty—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction or on an employer, firm, or entity if the individual was acting on its behalf and if it knew, or reasonably should have known, of the individual's conduct.

Disqualification of appraiser—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Under the regulations, attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before

the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

Disbarred by decision after hearing, Suspended by decision after hearing, Censured by decision after hearing, Monetary penalty imposed after hearing, and Disqualified after hearing—An administrative law judge (ALJ) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations and issued a decision imposing one of these sanctions. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision became the final agency decision.

Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision—An ALJ, after finding that no answer to OPR's complaint had been filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual’s opportunity,

after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current eligibility to practice (*i.e.*, an active professional license or active enrollment status). An enrolled agent or an enrolled retirement plan agent may also offer to resign in order to avoid a disciplinary proceeding.

Suspended by decision in expedited proceeding, Suspended by default decision in expedited proceeding, Suspended by consent in expedited proceeding—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license and criminal convictions).

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary’s delegate on appeal has issued a decision on or after September 26, 2007, which was

the effective date of amendments to the regulations that permit making such decisions publicly available; (2) the individual has settled a disciplinary case by signing OPR’s “consent to sanction” form, which requires consenting individuals to admit to one or more violations of the regulations and to consent to the disclosure of the individual’s own return information related to the admitted violations (for example, failure to file Federal income tax returns); or (3) OPR has issued a decision in an expedited proceeding for suspension.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by the names of states and second by the last names of individuals. Unless otherwise indicated, section numbers (*e.g.*, § 10.51) refer to the regulations.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Arizona				
Tucson	Alavez, Erin M.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from August 5, 2009
Florida				
Coral Springs	Salomon, Scott A.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from August 11, 2009
Illinois				
Homer Glen	Bujan, Jr., Frank M.	CPA	Disbarred by ALJ default decision for violation of § 10.51 (willful failure to file several Federal tax returns)	Indefinite from July 1, 2009
Missouri				
Cassville	Divers, Robert D.	Enrolled Agent	Censured by consent for admitted violation of § 10.22 (failed to exercise due diligence in preparing a client’s Form 1040, individual income tax return)	Indefinite from August 3, 2009

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Missouri (Continued)				
St. Louis	Suits, Jennifer K.	Attorney	Disbarred by ALJ default decision for violation of § 10.51 (willful failure to file several Federal tax returns)	Indefinite from July 1, 2009
Lake Ozark	Sutton, Elbert L.	CPA	Suspended by ALJ default decision for violation of § 10.51 (willful failure to file several Federal tax returns)	Indefinite from June 30, 2009
New Jersey				
Fort Dix	Pfaff, Robert A.	CPA	Suspended by decision in expedited proceeding under § 10.82 (conviction under 26 U.S.C. § 7201, tax evasion, and 18 U.S.C. § 2, tax evasion) in New York	Indefinite from August 5, 2009
New York				
New York	Larson, John M.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (conviction under 26 U.S.C. § 7201, tax evasion, and 18 U.S.C. § 2, tax evasion)	Indefinite from August 11, 2009
	Pfaff, Robert A., See New Jersey			
Texas				
Houston	Funderburgh, Lee	CPA	Suspended by default decision in expedited proceeding under § 10.82 (conviction under 26 U.S.C. § 7206, aiding and assisting in the preparation and presentation of false tax returns)	Indefinite from August 7, 2009
Early	Thomason, Frank J.	CPA	Disbarred by ALJ default decision for violation of § 10.51 (willful failure to file several Federal tax returns)	Indefinite from June 30, 2009

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2009–1 through 2009–26 is in Internal Revenue Bulletin 2009–26, dated June 29, 2009.

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¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2009–1 through 2009–26 is in Internal Revenue Bulletin 2009–26, dated June 29, 2009.



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