



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.30.2

FEBRUARY 24, 2025

EFFECTIVE DATE

(02-24-2025)

PURPOSE

- (1) This transmits new IRM 4.30.2, LB&I General Procedures, Other Technical Issues.

MATERIAL CHANGES

- (1) This is a new IRM that incorporates multiple LB&I directives. These are sorted first alphabetically by topic and then in chronological order within each topic.
- (2) IRM 4.30.2.2 includes a crosswalk of all directives showing where the guidance was placed or if it was obsoleted.

EFFECT ON OTHER DOCUMENTS

See the crosswalk in IRM 4.30.2.2 for information on which LB&I Directives are included in this IRM.

AUDIENCE

LB&I is the primary user. SB/SE is limited in scope to 4.30.2.8.1, 4.30.2.8.2, 4.30.2.11, 4.30.2.13 and 4.30.2.15.

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4.30.2

Other Technical Issues

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4.30.2.1
(02-24-2025)
Program Scope and Objectives

- (1) **Purpose:** The purpose of this IRM is to provide field examination procedures, processes and guidelines on specific technical issues previously contained in various LB&I Directives.
- (2) **Audience:** LB&I is the primary user of the IRM. SB/SE personnel are limited in scope to 4.30.2.8.1, 4.30.2.8.2, 4.30.2.11, 4.30.2.13 and 4.30.2.15.
- (3) **Policy Owner:** LB&I Policy under Strategy, Policy and Governance office in the Assistant Deputy Commissioners Compliance Integration organization.
- (4) **Program Owner:** Each technical topic covered in this IRM is owned by a different practice area in LB&I. Ownership of each topic is shown within each subsection below.
- (5) **Primary Stakeholders:** LB&I, SB/SE (limited to the subsections noted above in paragraph (2)), and IRS Independent Office of Appeals (Appeals).
- (6) **Contact Information:** To recommend changes or to make any other suggestions to this IRM section, contact the IRM author or see SPDER's IMD Contacts list by referencing guidelines provided in IRM 1.11.6.5, Providing Feedback About an IRM Section - Outside of Clearance. A request or inquiry can also be made using the *LB&I Policy Gateway*.

4.30.2.1.1
(02-24-2025)
Background

- (1) In the past, LB&I used an industry directive format to issue LB&I Directives. LB&I discontinued this practice.
- (2) LB&I Policy coordinated a process to evaluate all existing directives and determine the proper placement for each directive's content.
- (3) In order to comply with IRM 1.11.2.2, IRM Standards, this IRM incorporates several (but not all) directives deemed appropriate for the IRM. The directives incorporated in this IRM are sorted alphabetically by topic and in chronological order within each topic.
- (4) IRM 4.30.2.2 reflects a crosswalk of all LB&I Directives and their status.

4.30.2.1.2
(02-24-2025)
Authority

- (1) By law, the IRS has the authority to conduct examination under Title 26, Internal Revenue Code, Subtitle F - Procedure and Administration, Chapter 78, Discovery of Liability and Enforcement of Title, Subchapter A, Examination and Inspection.
- (2) The Commissioner has the authority to administer and enforce the Internal Revenue Code (Treasury Order No. 150-10). The authority is re-delegated to the Division Commissioners (Delegation Order 1-23). Division Commissioners may delegate to the Division Directors, certain authorities on matters, including cases and resources, previously delegated to Service Center or Practice Area Directors. See Division Delegation Order 1-23-12 in IRM 1.2.63.2.11. As a result, the LB&I commissioner may, through practice area directors, issue guidance to field employees to promote better understanding and consistency.
- (3) See also IRM 4.51.2.2.3, Content Placement and IRM 1.56.1.2, Policy Development Cycle and Process.
- (4) IRM 1.2.63, Division Delegation Orders of Authority for Large Business and International.

- (5) The guidance contained in this IRM is not an official pronouncement of the law or IRS position and cannot be used, cited or relied upon as such.
- 4.30.2.1.3
(02-24-2025)
Roles and Responsibilities
- (1) LB&I Policy coordinated the evaluation of all existing directives to determine which should be obsoleted or incorporated into the IRM.
- (2) The procedures in this IRM fall under the general exam procedures for LB&I and SB/SE.
- (3) All of the practice areas in LB&I share an equal responsibility in conducting a thorough examination. The practice area director is responsible for ensuring their employees follow the procedures outlined in the IRM.
- (4) LB&I subject matter experts (SMEs) in practice networks provide support to examiners on the technical issues contained in this IRM. For additional information on the roles and responsibilities of LB&I SMEs, see IRM 4.54.1, Roles and Responsibilities of SMEs.
- (5) The director, examination headquarters, is the executive responsible for providing policy and guidance for SB/SE examination employees and ensuring consistent application of policy, procedures and tax law administration.
- (6) All IRS personnel have the responsibility to ensure that taxpayer rights are protected and observed.
- 4.30.2.1.4
(02-24-2025)
Program Management and Review
- (1) The information in this IRM provides examiner guidance on various technical issues.
- (2) The procedures in this IRM fall under general exam procedures in IRM 4.46.1 through IRM 4.46.6, LB&I Examination Process and IRM 4.10.2, Examination of Returns, Overview of Examiner Responsibilities. There are no separate reports or management processes over the procedures in this IRM.
- 4.30.2.1.5
(02-24-2025)
Program Controls
- (1) LB&I will follow IRM 4.51.2, LB&I Administrative Guidance, for developing, changing, and documenting LB&I policies.
- (2) Included in its responsibilities, LB&I Policy will ensure former LB&I directives or other instructions to staff are appropriately incorporated into the IRM.
- 4.30.2.1.6
(02-24-2025)
Terms and Acronyms
- (1) Each subsection has terms and acronyms that apply to the guidance in that specific subsection. Please see the terms, definitions and acronyms shown in each subsection or the related exhibits.
- 4.30.2.1.7
(02-24-2025)
Related Resources
- (1) *LB&I Policy Gateway*
- (2) *LB&I Policy Office Virtual Library page*
- (3) *Audit Technique Guides (ATGs)*
- (4) *Practice Units (PUs)*
- (5) *LB&I Industry Knowledge Base Homepage*
- (6) *LB&I SME contact listing*

(7) *LB&I Request Tracker.*

4.30.2.2
(02-24-2025)

Directive Crosswalk

- (1) The following table is a crosswalk of each LB&I directive, listed chronologically. The explanation column provides where the guidance was placed or if the directive was obsolete.

Publication Date	LB&I Directive Title	LB&I Control No.	Explanation
12/12/2001	Industry Directive on the Conformity Election for Bank Bad Debts	None	Incorporated into this IRM. See IRM 4.30.2.4.1
02/07/2002	Field Directive on Depreciable Golf Course Land Improvements and the Impact of Rev. Rul. 2001-60	None	Incorporated into this IRM. See IRM 4.30.2.8.1
02/25/2002	Audit Procedures for Golf Course Land Improvements - Change in Accounting Method	None	Incorporated into this IRM. See IRM 4.30.2.8.2
03/04/2002	Field Directive on the Use of Statistical and Judgement Sampling in Research Credit Cases	None	This guidance can be found listed under directives on the <i>Research Credit Page</i> on irs.gov
03/14/2002	Field Directive on the Use of Estimates from Probability Samples	None	Superseded by LMSB-04-0809-032, Field Directive on the Use of Estimates from Probability Samples
04/08/2002	MACRS Asset Categories for Refinery Assets	None	Incorporated into Pub 5647, Petroleum Refining ATG
04/26/2002	Guidelines for Intangibles under IRC 263(a)	None	Obsolete by LB&I-04-0122-0002, Obsolescence/Withdrawal of LB&I Field Directives
03/24/2003	Planning & Examination of Construction "Tenant" Allowances for Leases Greater Than 15 Years	None	Incorporated into Pub 5495, Retail ATG

Publication Date	LB&I Directive Title	LB&I Control No.	Explanation
10/17/2003	Examination of Legally Mandated Research and Experimentation Expenses in the Biotech and Pharmaceutical Industries	None	This directive applied to the apportionment of legally mandated research and experimentation (R&E) expenses under Treasury Regulation 1.861-17(a)(4) which was amended by T.D. 9922, 85 FR 71998 (Nov. 12, 2020). The amendments made by T.D. 9922 included eliminating the gross income method of apportionment, thus eliminating the legally mandated R&E rule. Additionally, the directive addresses the use of a Coordinated Issue Paper, which was de-coordinated on January 21, 2014. Therefore, the directive is no longer applicable.
10/24/2003	Examination Procedures for Sports Franchise Acquisitions	None	Obsoleted by LB&I-04-0122-0002, Obsolescence/Withdrawal of LB&I Field Directives
10/24/2003	Examination of Sports Franchise Acquisitions	None	Obsoleted by LB&I-04-0122-0002, Obsolescence/Withdrawal of LB&I Field Directives
11/14/2003	Foreign Sales Corporation (FSC) IRC 921-927 Bundle of Rights in Software Issue	None	Obsoleted by LB&I-04-1110-0032, Industry Director's Directive (IDD) to Withdraw a Prior IDD on Foreign Sales Corporation (FSC) IRC 921-927 Bundle of Rights in Software Issue (IDD dated November 14, 2003)
04/16/2004	Field Directive on Timber Casualty Losses	None	Incorporated into this IRM. See IRM 4.30.2.13
04/30/2004	LMSB Directive on the Planning and Examination of Research Credit Issues in a Branded Pharmaceutical Company	None	Modified and incorporated the industry terminology into Pub 5931, Pharmaceutical Industry Research Credit ATG. The ATG has been modified to comply with IRC 41(d)(2) and 41(d)(2)(A) which state that the qualified research tests must be applied to each business component.
07/31/2004	Field Directive on Cost Depletion - Determination of Recoverable Reserves	None	Incorporated into Pub 5652, Oil & Gas ATG

Publication Date	LB&I Directive Title	LB&I Control No.	Explanation
10/12/2004	Field Directive on IRC § 907 Evaluating Taxpayer Methods of Determining Foreign Oil and Gas Extraction Income (FOGEI) and Foreign Oil Related Income (FORI)	None	Incorporated into Pub 5652, Oil & Gas ATG
12/16/2004	Field Directive on the Planning and Examination of Cost Segregation Issues in the Retail Industry	None	Incorporated into Pub 5653, Cost Segregation ATG
01/01/2005	Disposition of Income Forecast Method Issues	None	Obsoleted by LB&I-04-0122-0002, Obsolescence/Withdrawal of LB&I Field Directives
03/04/2005	Field Guidance on the Planning and Examination of the Cyclical Overhauls, Betterments, and Rebuilds of Freight Cars for Class I Railroads	None	Superseded by LB&I-04-1212-013, Railroad Industry Capitalization Issues Impacted by the 3/15/2012, Stand Down Directive (LB&I-04-0312-04) released after the Temporary Tangible Regulations were Issues 12/23/2011
03/04/2005	Field Guidance on the Planning and Examination of the Cyclical Overhauls, Betterments, and Rebuilds of Locomotives for Class I Railroads	None	Superseded by LB&I-04-1212-013, Railroad Industry Capitalization Issues Impacted by the 3/15/2012, Stand Down Directive (LB&I-04-0312-04) released after the Temporary Tangible Regulations were Issues 12/23/2011
05/20/2005	Examination of Transaction Costs in the Acquisition of Businesses	None	Obsoleted by LB&I-04-0122-0002, Obsolescence/Withdrawal of LB&I Field Directives
08/26/2005	LMSB Directive on Amended Returns/Refund Claims Containing Invalid I.R.C 280C(c)(3) Elections	None	Incorporated into this IRM. See IRM 4.30.2.12.1
11/28/2005	Field Directive on the Planning and Examination of Cost Segregation Issues in the Biotech/ Pharmaceutical Industry	None	Incorporated into Pub 5653, Cost Segregation ATG

Publication Date	LB&I Directive Title	LB&I Control No.	Explanation
01/12/2006	Examination of Multiple Parties in Intermediary Transaction Tax Shelters as described in Notice 2001-16, 2001-09 I.R.B. 730	None	Incorporated into this IRM. See IRM 4.30.2.11
01/13/2006	Field Directive on Examination of IRC 847	None	Obsoleted by LB&I-04-0122-0002, Obsolescence/Withdrawal of LB&I Field Directives
03/16/2006	Industry Directive -- Treatment of Semiconductor Assembly and Test Activities as Manufacturing	None	Incorporated into the LB&I Concept Unit, Substantial Contribution Test for CFC Manufacturing Exception, without specific industry limitation. This was published on 01/02/2018 and can be found on under 2018 on the <i>Practice units: 2019 to 2014</i> page on irs.gov
07/31/2006	Industry Director Directive on Deductibility of Casino Comps	LMSB-04-0706-009	Incorporated into this IRM. See IRM 4.30.2.5
11/03/2009	Field Directive on the Use of Estimates from Probability Samples	LMSB-04-0809-032	Incorporated into IRM 4.47.3
05/13/2010	Use of Delegation Order (DO) 4-25 on Appeals Settlement Position (ASP) for the IRC 41 Research Credit – Intra-Group Receipts from Foreign Affiliates	LMSB-04-0510-018	Obsoleted by a memorandum, issued on 10/14/2010 (no control number), from the Director, Pre-filing and Technical Guidance (PFTG) to Industry Directors
05/20/2010	Examination of Dividends Received Deduction on Separate Accounts of Life Insurance Companies	LMSB-04-0510-015	Obsoleted by LB&I-04-0122-0002, Obsolescence/Withdrawal of LB&I Field Directives
07/26/2010	Directive on Examination Action With Respect to Certain Gain Recognition Agreements	LMSB-04-0510-017	Obsoleted by a memorandum issued by Douglas W. O'Donnell on 11/21/2014
02/04/2011	Industry Director's Directive (IDD) to Withdraw a Prior IDD on Foreign Sales Corporation (FSC) IRC 921-927 Bundle of Rights in Software Issue (IDD dated November 14, 2003)	LMSB-04-1110-032	Issued to withdraw a earlier directive (Foreign Sales Corporation (FSC) IRC 921-927 Bundle of Rights in Software Issue)

Publication Date	LB&I Directive Title	LB&I Control No.	Explanation
03/28/2011	LB&I Alert – Cases Forwarded to Appeals That Involve a Section 965 Issue and a Transfer Pricing Adjustment under Section 482	LB&I-04-1110-034	Obsoleted by LB&I-04-0122-0002, Obsolescence/Withdrawal of LB&I Field Directives
03/30/2011	Industry Director's Directive # 2—Employment Tax and the Employees on the U.S. Outer Continental Shelf	LB&I-04-0211-005	Incorporated Pub 5652, Oil & Gas ATG
04/14/2011	IRC 475: Field Directive related to Mark-to-Market Valuation	LB&I-04-1110-033	Incorporated into this IRM. See IRM 4.30.2.10
07/28/2011	Examination of Success-Based Fees in the Acquisition of Businesses	LB&I-04-0511-012	Obsoleted by LB&I-04-0122-0002, Obsolescence/Withdrawal of LB&I Field Directives
11/01/2011	UTP Guidance and Procedures for the Field	None	Incorporated into IRM 4.46.3.3.5.1
11/25/2011	Large Business & International Directive Transition Rules for Taxpayers Adopting the Safe Harbor Method of Accounting for Electric Transmission and Distribution Property	LB&I-04-1111-019	Modified (not superseded) by LB&I-04-0513-003. Incorporated into Pub 5712, Capitalization of Tangible Property ATG
01/23/2012	Large Business and International Directive Wireless Telecommunication Assets	LB&I-04-1111-020	Incorporated into this IRM. See IRM 4.30.2.14
01/23/2012	Large Business & International Directive Telecommunication Carriers Change in Method of Accounting Relating to Conversion of Capitalized Assets to Repair Expense Under IRC Section 263(a)	LB&I-04-1111-021	Incorporated into Pub 5712, Capitalization of Tangible Property ATG
07/30/2012	IRC 166: LB&I Directive Related to Partial Worthlessness Deduction for Eligible Securities Reported by Insurance Companies.	LB&I-04-0712-009	Incorporated into this IRM. See IRM 4.30.2.4.2

Publication Date	LB&I Directive Title	LB&I Control No.	Explanation
12/07/2012	Railroad Industry Capitalization Issues Impacted by the 3/15/2012, Stand Down Directive (LB&I-04-0312-04) released after the Temporary Tangible Regulations were Issues 12/23/2011	LB&I-04-1212-03	Incorporated into Pub 5712, Capitalization of Tangible Property ATG
12/07/2012	Guidance for Computing and Substantiating the Credit for Increasing Research Activities under Section 41 of the Internal Revenue Code for Activities involved in Developing New Pharmaceutical Drugs and Therapeutic Biologics	LB&I-04-1212-014	Incorporated into this IRM. See IRM 4.30.2.12.2
03/22/2013	Updated LB&I Directive for TPS IRC 263(a)	LB&I-04-0313-001	Incorporated into Pub 5712, Capitalization of Tangible Property ATG
05/02/2013	Extension of Transition Rules for Taxpayers Adopting the Safe Harbor Method of Accounting for Electric Transmission and Distribution Property-LB&I Directive #2	LB&I-04-0513-003	Superseded by LB&I-04-0814-006
06/10/2013	Changing to the Method of Accounting Provided in Rev. Proc. 2013-24 for Steam or Electric Generation Property	LB&I-04-0713-005	Incorporated into Pub 5712, Capitalization of Tangible Property ATG
07/24/2013	Guidance for Examiners on IRC 199 Benefits and Burdens of Ownership Analysis in Contract Manufacturing Arrangements	LB&I-04-0713-006	Obsoleted by LB&I-04-0122-0002, Obsolescence/Withdrawal of LB&I Field Directives
10/29/2013	Updated Guidance for Examiners on I.R.C. 199 Benefits and Burdens of Ownership Analysis in Contract Manufacturing Arrangements	LB&I-04-1013-008	Incorporated into this IRM. See IRM 4.30.2.6.1
01/21/2014	De-coordination of All LB&I Coordinated Issue Papers	LB&I-04-0114-002	Incorporated into the 2021 revision of IRM 4.51.2.5

Publication Date	LB&I Directive Title	LB&I Control No.	Explanation
01/27/2014	Updated Guidance on the Examination of Milestone Payments in the Acquisition of Businesses	LB&I-04-0114-001	Obsoleted by LB&I-04-0122-0002, Obsolescence/Withdrawal of LB&I Field Directives
03/18/2014	LB&I Directive for the Use of MFT 06 on FBAR Examination Cases	LB&I-04-1213-010	Incorporated into IRM 4.26.17
07/17/2014	IRC 446: LB&I Directive for Hedging of Variable Annuity Guaranteed Minimum Benefits (GMxB) by Insurance Companies	LB&I-04-0514-0050	Incorporated into this IRM. See IRM 4.30.2.9.1
09/03/2014	Large Business & International Directive Extending Transition Rules and the Scope Limitation Waiver for Taxpayers Adopting the Safe Harbor Method of Accounting for Electric Transmission and Distribution Property-LB&I Directive #3	LB&I-04-0814-006	Incorporated into Pub 5712, Capitalization of Tangible Property ATG.
10/14/2014	Large Business & International Directive for Allocating Mixed Service Costs Under IRC 263A to Certain Self-Constructed Property of Electric and Natural	LB&I-04-0814-007	Incorporated into this IRM. See IRM 4.30.2.7
10/24/2014	LB&I Directive Related to IRC 166 Deductions for Eligible Debt and Eligible Debt Securities	LB&I-04-1014-008	Incorporated into this IRM. See IRM 4.30.2.4.3
03/16/2015	LB&I Directive on the I.R.C. 199 Definition of "Manufactured, Produced, Grown, or Extracted"	LB&I-04-0315-001	Incorporated into this IRM. See IRM 4.30.2.6.2
04/16/2015	LB&I Directive on the Examination of Taxpayers Using the Safe Harbor Methods of Accounting for Cable Network Assets	LB&I-04-0814-003	Incorporated into Pub 5712, Capitalization of Tangible Property ATG.

Publication Date	LB&I Directive Title	LB&I Control No.	Explanation
07/06/2015	LB&I Directive for Determining When "Substantially All" of a Major Component (as Defined in Revenue Procedure 2013-24) has been Replaced under I.R.C. Section 263(a)	LB&I-04-0315-002	Incorporated into Pub 5712, Capitalization of Tangible Property ATG.
09/11/2017	Large Business & International Directive for Determining Units of Property and Major Components in the Mining Industry	LB&I-04-0917-004	Incorporated into Pub 5712, Capitalization of Tangible Property ATG.
09/11/2017	Activities under IRC 41 for Taxpayers that Expense Research and Development Costs on their Financial Statements pursuant to ASC 730	LB&I-04-0917-005	Incorporated into this IRM. See IRM 4.30.2.12.3
01/12/2018	Information Document Request (IDR) in LB&I Examinations	LB&I-04-0118-001	Incorporated into IRM 4.46.4, Exhibit 4-2
01/12/2018	Instructions for Examiners on Transfer Pricing Issue Examination Scope - Appropriate Application of IRC 6662(e) Penalties	LB&I-04-0118-003	Incorporated into IRM 4.61.3
01/12/2018	Instructions for LB&I on Transfer Pricing Issue Selection- Reasonably Anticipated Benefits in Cost Sharing Arrangements.	LB&I-04-0118-004	Withdrawn by LB&I-04-0519-005
01/12/2018	Instructions for Examiners on Transfer Pricing Issue Selection- Cost-Sharing Arrangement Stock Based Compensation	LB&I-04-0118-005	Withdrawn by LB&I-04-0719-008
01/12/2018	Instructions for LB&I on Transfer Pricing Selection and Scope of Analysis - Best Method Selection	LB&I-04-0118-006	Incorporated into IRM 4.61.3

Publication Date	LB&I Directive Title	LB&I Control No.	Explanation
08/24/2018	IRC 807: LB&I Directive Related to Principle Based Reserves for Variable Annuity Contracts (AG 43/ VM-21) and Life Insurance Contracts VM-20)	LB&I-04-0818-015	Incorporated into this IRM. See IRM 4.30.2.9.2
08/27/2018	LB&I Directive on Timeshare Issue	LB&I-04-0818-013	Incorporated into IRM 4.61.12
11/21/2018	LB&I Directive on Amended Return/Claim for Refund Relating to Internal Revenue Code (IRC) 199	LB&I-04-1118-016	Incorporated into this IRM. See IRM 4.30.2.6.3
05/21/2019	Withdrawal of Directive LB&I-04-0118-04	LB&I-04-0519-005	Issued to withdraw an earlier directive (LB&I-04-0114-04)
07/31/2019	Withdrawal of Directive LB&I-04-0118-04	LB&I-04-0719-008	Issued to withdraw an earlier directive (LB&I-04-0114-05)
08/06/2019	LB&I and SBSE Joint Directive on Creditability of French Social Taxes	LB&I-04-0819-007	Incorporated into IRM 21.8.1.4.3.1
10/10/2019	LB&I and SB/SE Joint Directive on the Work Opportunity Tax Credit per Internal Revenue Code (IRC) 51	LB&I-04-1019-011	Incorporated into this IRM. See IRM 4.30.2.15
03/10/2020	LB&I Directive on the Centralized Risking of Research Issues under IRC 41 & 174	LB&I-04-0320-0006	Incorporated into IRM 4.46.3.2.6.8
08/10/2020	Guidance for Allowance of the Credit for Increasing Research Activities Under IRC Section 41 for Taxpayers that Expense R&D Costs on their Financial Statements Pursuant to ASC 730	LB&I-04-0820-0016	Incorporated into this IRM. See IRM 4.30.2.12.4

4.30.2.3
(02-24-2025)
**Technical Topics
Covered**

- (1) After evaluation of each directive's content, some were determined appropriate for this IRM.
- (2) The topics covered and their subsections are listed in the table below.

Topic	IRM Subsection
Bad Debts	IRM 4.30.2.4
Casino Complimentary Goods and Services	IRM 4.30.2.5
Domestic Production Activities Deduction	IRM 4.30.2.6
Electric and Gas Utilities	IRM 4.30.2.7
Golf Courses	IRM 4.30.2.8
Insurance	IRM 4.30.2.9
Mark-to-Market Valuation	IRM 4.30.2.10
Multiple Parties in Intermediary Transaction Tax Shelter	IRM 4.30.2.11
Research Credit	IRM 4.30.2.12
Timber Casualty Losses	IRM 4.30.2.13
Wireless Telecommunication Assets	IRM 4.30.2.14
Work Opportunity Tax Credit	IRM 4.30.2.15

4.30.2.4
(02-24-2025)
Bad Debts

- (1) LB&I released 3 directives on the general topic of bad debts.
- (2) Two of the directives are related to the banking industry.
- (3) One of the directives is related to the insurance industry.
- (4) On December 28, 2023, Treasury and the IRS published proposed regulations (REG-121010-17, 88 FR 89636) to update the standard for determining when debt instruments held by regulated financial companies, such as banks and insurance companies, or members of regulated financial groups would be conclusively presumed to be worthless. The proposed regulations generally would apply to charge-offs made on an applicable financial statement that occur in taxable years ending on or after the publication date of the final regulations. A regulated financial company or a member of a regulated financial group, however, may choose to apply the proposed regulations to charge-offs made on its applicable financial statement that occur in taxable years ending on or after December 28, 2023, and before the publication date of the final regulations. Rev. Proc. 2024-30 allows an eligible taxpayer to change its method of accounting to use the method described in the proposed regulations for taxable years ending on or after December 28, 2023.
 - a. Revenue agents examining a bank that is relying on the directive or a regulated financial company (other than a regulated insurance company)

or member of a regulated financial group that has chosen to apply the proposed regulations to charge-offs made on their AFS that occur in taxable years ending on or after December 28, 2023, should contact one of the Banking PN SMEs on the *Financial Institutions & Products Knowledge Base*.

- b. Revenue agents examining insurance companies should contact one of the insurance SMEs on the *Financial Institutions & Products Knowledge Base*.

4.30.2.4.1
(02-24-2025)
**Conformity Election for
Bank Bad Debts**

- (1) LB&I released **Industry Directive on the Conformity Election for Bank Bad Debts** dated December 12, 2001 (no control number). The Director, Enterprise Activities Practice Area, is responsible for the policies and procedures in this IRM subsection.
- (2) The purpose is to provide guidance to examiners in the audit of the bad debt conformity election for banking institutions, in light of and as a companion to the publication of Rev. Rul. 2001-59 in I.R.B 2001-51. This Revenue Ruling resulted from the banking industry's and the IRS's joint effort to clarify the conformity election as part of the Industry Issue Resolution Pilot Program.
- (3) The bad debt conformity election for banks was added to the Treasury Regulations in response to the September, 1991 Treasury White Paper, "Report to The Congress on The Tax Treatment of Bad Debts by Financial Institutions," which addressed industry requests for book/tax conformity in the bad debt area. The conformity election under 26 CFR 1.166-2(d)(3) is an accounting method available to banks to establish a conclusive presumption of worthlessness, either in whole or in part, for its loans. If a bank has properly complied with the terms of the conformity election, the bank is entitled to a bad debt deduction for loans classified as "loss assets," which were charged off for regulatory purposes.
- (4) Proper election of the conformity method of accounting substantially reduces the time required for auditing bad debts, thus saving resources for both the bank and the IRS. The attached guidelines are intended to assist examiners in determining whether a proper conformity election was made and to provide assistance to examiners on the efficient use of time and resources in the analysis of this issue. The commitment of staffing to examine conformity election bad debts is usually not an effective utilization of resources.
- (5) Approaches to planning and conducting an examination of the conformity election are provided in Exhibit 4.30.2-1.
- (6) If you have any questions, please contact the banking subject matter expert.

4.30.2.4.2
(02-24-2025)
**Partial Worthlessness
Deduction for Eligible
Securities Reported by
Insurance Companies**

- (1) LB&I released **IRC 166: LB&I Directive Related to Partial Worthlessness Deduction for Eligible Securities Reported by Insurance Companies** dated July 30, 2012 (Control No: LB&I-04-0712-009). The Director, Enterprise Activities Practice Area is responsible for the policies and procedures in this IRM subsection.
- (2) LB&I examiners should not challenge an insurance company's partial worthlessness deduction under IRC 166(a)(2) for the amount of the Statement of Statutory Accounting Principles (SSAP) 43R credit-related impairment charge-offs of eligible securities as reported on its Annual Statement. Independently

determining partial worthlessness amounts under IRC 166 imposes a significant burden on both insurance companies and LB&I. If an insurance company claims a IRC 166(a)(2) partial worthlessness deduction for eligible securities, but does not meet the requirements laid out here, regular audit procedures will apply.

- (3) Examination guidance on this topic is provided in Exhibit 4.30.2-2.

4.30.2.4.3
(02-24-2025)
IRC 166 Deductions for Eligible Debt and Eligible Debt Securities

- (1) LB&I released **LB&I Directive Related to IRC 166 Deductions for Eligible Debt and Eligible Debt Securities** dated October 24, 2014 (Control No: LB&I-04-1014-008). The Director, Enterprise Activities Practice Area is responsible for the policies and procedures in this IRM subsection.
- (2) For a full copy of the guidance, see Exhibit 4.30.2-4

4.30.2.5
(02-24-2025)
Casino Complimentary Goods and Services

- (1) LB&I released **Industry Director Directive on Deductibility of Casino Comps** dated July 31, 2006 (Control No: LMSB-04-0706-009). The Directors of the Enterprise Activities Practice Area and Northeastern Compliance Practice Area are responsible for the policies and procedures in this IRM subsection.
- (2) The directive was intended to conserve examination resources on the deductibility of complimentary goods and services ("comps") provided by casinos to its patrons as an inducement to encourage gaming activity. It reflected a management decision that balances resources and workload priorities. This guidance updates the directive.

4.30.2.5.1
(02-24-2025)
Background

- (1) Comps are items, such as goods, services and facilities (e.g. lodging) that casinos give to their customers. Casino comp programs generally:
- award comps based on a patron's prior activity
 - use tracking systems to determine the amount and result of a patron's gambling, as well as determine the appropriate level of comps to provide to a patron
 - apply a formula based on the patron's level of play to award comps to all regular patrons (i.e. the general public)
 - publicly market the comps program to induce patronage.
- (2) Most regular patrons participate in casinos' favored customer programs, often called slot clubs. Slot clubs provide the most accurate measurement of a patron's play because a slot club member inserts the member's card into a gaming machine, creating a computer record of the member's activity. Casinos may track the play of patrons at games played virtually or online. Additionally, casinos may use different methods to track the play of patrons at table games, for example, by tracking software or by floor supervisors and dealers keeping track of spending and average bets.

4.30.2.5.2
(02-24-2025)
Analysis

- (1) Generally, the deduction of meals and entertainment expenses is limited by IRC 274. However, IRC 274(e)(7) provides an exception to these limitations for expenses for goods, services, and facilities made available to the general public. Expenses for promotional purposes are generally treated as falling under IRC 274(e)(7).
- (2) If a casino awards comps to its patrons under a comps program described in

IRM 4.30.2.5.1, using a method described in IRM 4.30.2.5.1 paragraph (2), agents are directed to not challenge whether the comps qualify for treatment as promotional expenses under IRC 274(e)(7).

- (3) The guidance in IRM 4.30.2.5.2(2) does not prevent agents from examining the tax treatment of extraordinary comps not available to the general public.
- (4) If you have any questions, please contact a Gaming Industry SME or the Deductible and Capital Expenditures Practice Network.

4.30.2.6
(02-24-2025)
**Domestic Production
Activities Deduction**

- (1) LB&I released 3 directives related to the general topic of domestic production activities deduction, under IRC 199.
- (2) Section 13305 of the Tax Cuts and Jobs Act (Pub. L. No. 115-97) repealed IRC 199 for taxable years beginning after December 31, 2017.

4.30.2.6.1
(02-24-2025)
**Benefits and Burdens of
Ownership in Contract
Manufacturing
Arrangements**

- (1) LB&I released **Updated Guidance for Examiners on IRC 199 Benefits and Burdens of Ownership Analysis in Contract Manufacturing Arrangements**, dated October 29, 2013 (Control No: LB&I-04-1013-008). The Director, Enterprise Activities Practice Area is responsible for the policies and procedures in this IRM subsection.

4.30.2.6.1.1
(02-24-2025)
Purpose

- (1) On February 1, 2012, the Large Business & International (LB&I) Division issued Directive LBI-04-0112-001 (the “prior directive”) to LB&I examiners to assist in making a determination whether a taxpayer has the benefits and burdens of ownership under a contract manufacturing arrangement for purposes of Treas. Reg. 1.199-3(f)(1). On July 24, LB&I issued Directive LBI-04-0713-006 (the “second directive”), superseding the prior directive. This guidance updates the second directive.

4.30.2.6.1.2
(02-24-2025)
Background

- (1) In general, IRC 199 allows a deduction for income from any lease, rental, license, sale, exchange, or other disposition of qualifying production property manufactured, produced, grown, or extracted by the taxpayer in whole or significant part within the United States; any qualified film produced by the taxpayer; or electricity, natural gas, or potable water produced by the taxpayer in the United States. Only one taxpayer may claim the IRC 199 deduction for a qualifying activity performed with respect to a qualifying property. See IRC 199(d)(10) and 26 CFR 1.199-3(f)(1). As used in this guidance, the term “qualifying activity” means manufactured, produced, grown, or extracted (defined in Treas. Reg. 1.199-3(e)) and the term “qualifying property” includes qualifying production property (defined in IRC 199(c)(5)); qualified film produced by the taxpayer; and electricity, natural gas, or potable water produced by the taxpayer in the United States.
- (2) To prevent more than one taxpayer from claiming the IRC 199 deduction in contract manufacturing arrangements, the IRS adopted the benefits and burdens test. See 26 CFR 1.199-3(f)(1). Under the benefits and burdens test, which is based on all facts and circumstances, only the party with the benefits and burdens of ownership over the qualifying property during the period of the qualifying activity may be entitled to the IRC 199 deduction. Often both parties to a contract manufacturing arrangement have some of the indicia of benefits and burdens over the qualifying activities and thus, it may be difficult to determine which party may claim the IRC 199 deduction with respect to the

same economic activity. Therefore, both parties or neither party may claim the deduction. As a result, application of the facts and circumstances approach results in extensive resource expenditures for taxpayers and the IRS. The prior directive instructed LB&I examiners to apply a three-part test to determine which party in a contract manufacturing arrangement had the benefits and burdens under Treas. Reg. 1.199-3(f)(1). LB&I has reconsidered the approach in the prior directive.

4.30.2.6.1.3
(02-24-2025)
Scope of Guidance

- (1) This guidance is limited in scope to determine which unrelated party (as defined in Treas. Reg. 1.199-3(b)) in a contract manufacturing arrangement may claim the IRC 199 deduction because it satisfies the benefits and burdens test. In order to claim the deduction, that party must also meet all other requirements of IRC 199. This guidance does not change the special rules in the regulations under IRC 199 applicable to expanded affiliated groups (EAGs), qualifying in-kind partnership, EAG partnerships, or government contracts. This guidance also does not apply to any other provision of the IRC, including IRC 263A.
- (2) **Examination Guidance:** In deciding whether or not to challenge a taxpayer's position (the entity under examination) that has the benefits and burdens of ownership under a contract manufacturing arrangement with a counterparty (the other party to a contract manufacturing arrangement with the taxpayer), and LB&I examiner should request that the taxpayer provide the examiner:
 - a. A statement that explains the basis for the taxpayer's determination that it had the benefits and burdens of ownership in the year or years under examination.
 - b. A certification statement (using Exhibit 4.30.2-6) signed by the taxpayer.
 - c. A certification statement (using Exhibit 4.30.2-7) signed by the counterparty.

4.30.2.6.1.4
(02-24-2025)
Benefits and Burdens Statement and Certification Statement

- (1) In general, the taxpayer should provide the benefits and burdens statement and certification statements described in IRM 4.30.2.6.1.3 to the examiner within 30 days of the date an information documents request is issued to the taxpayer with respect to the IRC 199 deduction.
- (2) The benefits and burden statement and certification statements described in IRM 4.30.2.6.1.3 must be provided for each contract and cannot be changed for the term of the contract. If there is a change as to which party to a multi-year contract has the benefits and burdens of ownership, this guidance is no longer applicable and examiners should apply regular audit procedures for the year of change or any subsequent year(s) to which that contract applies.
- (3) For this guidance to apply, the taxpayer and the counterparty must complete all sections of the certification statements included in Exhibit 4.30.2-6 and Exhibit 4.30.2-7, as applicable. The certification statements must be signed under penalty of perjury by the individuals who are authorized to execute the taxpayer's and counterparty's federal income tax returns. For a consolidated federal income tax return, the common parent is the sole agent for the group and an individual authorized to sign the common parent's federal income tax returns must sign the certification statement for each member of the group.
- (4) If the taxpayer provides the benefits and burdens statement and certification statements, examiners should not challenge the taxpayer has the benefits and burdens of ownership for purposes of IRC 199 over each qualifying property

upon which a qualifying activity is performed under the contract manufacturing arrangement. If the taxpayer does not provide both the certification statements, it should not be presumed the taxpayer does not have the benefits and burdens. Rather, examiners should apply regular audit procedures to determine which entity (the taxpayer or the counterparty) has the benefits and burdens of ownership for purposes of IRC 199.

4.30.2.6.1.5
(02-24-2025)
Contact

- (1) For further guidance please contact the Corporate Income and Losses Practice Network.

4.30.2.6.2
(02-24-2025)
**Definition of
“Manufactured,
Produced, Grown, and
Extracted”**

- (1) LB&I released **LB&I Directive on IRC 199 Definition of “Manufactured, Produced, Grown, or Extracted”** on March 16, 2015 (Control No. LBI-04-0315-001). The Director, Enterprise Activities Practice Area is responsible for the policies and procedures in this IRM subsection.
- (2) This guidance provides direction to the Large Business & International (LB&I) examiners on what activities meet the definition of “manufactured, produced, grown, or extracted” (MPGE) under Treas. Reg. 1.199-3(e) for the Domestic Production Deduction under IRC 199.

4.30.2.6.2.1
(02-24-2025)
Background

- (1) In general, IRC 199 provides a deduction for certain income attributable to domestic production activities. To be eligible for the deduction, among other requirements, a taxpayer must determine that it had manufactured, produced, grown, or extracted (MPGE) the qualified property in whole or in significant part within the United States.

4.30.2.6.2.2
(02-24-2025)
Scope of Guidance

- (1) This guidance provides instructions to examiners on whether certain activities meet the definition of MPGE. In order to claim the deduction, the taxpayer must also meet all of the other requirements of IRC 199 and the relevant regulations.

Note: MPGE is defined in Treas. Reg. 1.199-3(e)(1) and illustrated in the examples under Treas. Reg. 1.199-3(e)(5). Also see IRC 199(c)(5).

4.30.2.6.2.3
(02-24-2025)
Examination Guidance

- (1) Taxpayers may not claim IRC 199 deductions when their activities fall outside the definition of MPGE in Treas. Reg. 1.199-3(e). Examples of activities that are generally not MPGE include the following activities performed at a retail level:
 - Cutting blank keys to a customer’s specification.
 - Mixing base paint and a paint coloring agent.
 - Applying garnishments to cake that is not baked when sold.
 - Applying gas to agriculture products to slow or expedite fruit ripening.
 - Storing agricultural products in a controlled environment to extend shelf life.
 - Maintaining plants and seedlings.
- (2) Other similar activities may be non-MPGE activities, depending on the specific facts and circumstances of the taxpayer’s activities, processes through which the activities are performed, and the taxpayer’s industry.

- (3) LB&I examiners are encouraged to contact the Corporate Income and Losses Practice Network if, in the cases assigned to them, a taxpayer claims IRC 199 deductions for activities that are different from but similar to those described in this guidance. This will enable LB&I to expand the list of non-MPGE activities as appropriate.

4.30.2.6.2.4
(02-24-2025)
Contact

- (1) If you have any questions please contact the Corporate Income and Losses Practice Network.

4.30.2.6.3
(02-24-2025)
**Amended Return or
Claim for Refund
Relating to IRC 199**

- (1) LB&I released **LB&I Directive on Amended Return/Claim for Refund Relating to Internal Revenue Code Section 199 (IRC 199)**, on November 21, 2018 (Control No. LBI-04-1118-016). The Director, Enterprise Activities Practice Area is responsible for the policies and procedures in this IRM subsection.

4.30.2.6.3.1
(02-24-2025)
Introduction

- (1) LB&I announced a campaign to evaluate claims filed for additional domestic production activity deduction (DPAD) under IRC 199 to address compliance risk associated with the repeal of the DPAD.
- (2) This guidance provides LB&I examiners with instructions when a taxpayer files an amended return or claim for refund relating to IRC 199, DPAD. This guidance only applies to LB&I taxpayers and is intended to provide a uniform approach to evaluating the claims and ensure the most efficient use of LB&I resources.

4.30.2.6.3.2
(02-24-2025)
Applicable Law

- (1) Public Law 115-97 (as amended by the Consolidated Appropriations Act, 2018, Public Law 115-141, 101(c), 132 Stat. 348, 1151, 1156) repealed the DPAD for taxable years beginning after December 31, 2017. Taxpayers should not claim the DPAD for 2018 or later years, unless any of the following applies:
 - Their taxable year began before January 1, 2018.
 - The DPAD results from being a shareholder or partner in an S Corporation or partnership with a taxable year that began before January 1, 2018.
 - The DPAD results from being a beneficiary of an estate or trust with a taxable year that began before January 1, 2018.
 - The DPAD results from being a patron of an agricultural or horticultural cooperative with a taxable year that began before January 1, 2018.
- (2) Prior to its repeal, IRC 199 generally provided for a tax deduction equal to 9% of the lesser of the qualified productions activities income (QPAI) of the taxpayer for the taxable year, or the taxpayer's taxable income for the taxable year. Additionally, the amount of the deduction allowable for any taxable year was limited to 50% of the W-2 wages of the taxpayer for the taxable year properly allocable in the determination of QPAI.

4.30.2.6.3.3
(02-24-2025)

**Handling Amended
Returns/Refund Claims
Under IRC 199**

- (1) As announced in *IRS Announces the Identification and Selection of Five Large Business and International Compliance Campaigns (IRS LB&I Compliance Campaigns Sept 10 2018 | Internal Revenue Service)*, LB&I established a process to risk assess IRC 199 amended returns and claims for refund for taxable years prior to the repeal of IRC 199. Claims for refund filed with the Ogden Campus or with an examiner will be risk assessed. Materiality will be considered during the risk review process.
- (2) An examiner who receives an informal claim for refund, amended return not filed with the campus, or a joint committee case under IRC 199 is required to submit an inquiry to the Corporate Income and Losses Practice Network. A member of the risk review team (comprised of CIL PN employees and filed examiners) will assist in risk assessing the amended return or claim for refund.
- (3) Examiners will continue to follow the rules and procedures in Pub 5125, LB&I Examination Process, including the expectations with respect to claims for refund. Examiners should also follow IRM 4.46.3.7, LB&I Claims Process, with respect to claims and ensure that the claim is valid and meets the requirements of Treasury Regulation 301.6402-2. The CIL PN is available to assist with this determination.
- (4) When disallowing a claim, in part or in full, examiners will refer to the procedures in IRM 4.10.8.10, Claims for Refund and Overassessments. The Written Acknowledgement of the Facts (AOF) process in IRM 4.46.4.11 also must be followed.

4.30.2.6.3.4
(02-24-2025)

IRC 6676 Penalty Issues

- (1) IRC 6676, Erroneous Claim for Refund or Credit, should be considered when appropriate, based on the facts and circumstances of the issue. An examiner may obtain assistance from counsel in determining whether referrals to the Office of Professional Responsibility (OPR) are appropriate. See IRM 20.1.6.12.3, Referral to the Office of Professional Responsibility.

4.30.2.6.3.5
(02-24-2025)

Contact

- (1) If you have any questions please contact the Corporate Income and Losses Practice Network.

4.30.2.7
(02-24-2025)

Electric and Gas Utilities

- (1) LB&I released **Allocating Mixed Service Costs Under IRC 263A to Certain Self-Constructed Property of Electric and Natural Gas Utilities**, dated October 14, 2014 (Control No. LBI-04-0814-007). The Director, Enterprise Activities Practice Area is responsible for the policies and procedures in this IRM subsection.
- (2) For a full copy of the guidance, see Exhibit 4.30.2-8.

4.30.2.8
(02-24-2025)

Golf Courses

- (1) LB&I released 2 directives related to the general topic of Golf Courses.

4.30.2.8.1
(02-24-2025)

**Depreciable Golf Course
Land Improvements**

- (1) LB&I released **Field Directive on Depreciable Golf Course Land Improvement and the Impact of Rev. Rul 2001-60**, dated February 7, 2002 (no control number). The Directors of Enterprise Activities Practice Area and Western Compliance Practice Area are responsible for the policies and procedures in this IRM subsection.

4.30.2.8.1.1
(02-24-2025)
Introduction

- (1) This guidance supersedes a memorandum dated December 28, 2001, "Field Guidance on Depreciable Golf Course Land Improvements and the Impact of Rev. Rul. 2001-60". It is intended to provide direction to effectively utilize resources in the classification and examination of taxpayers who operate golf courses in light of the publication of Rev. Rul. 2001-60, (2001 TNT 231-18), published November 29, 2001.
- (2) Rev. Rul. 2001-60 provides guidance on the proper tax treatment of land preparation costs in the construction or reconstruction of golf course greens. The ruling replaces Rev. Rul. 55-290, 1955-1 C.B. 320. While the ruling continues to apply the holding of Rev. Rul. 55-290 regarding the treatment of land preparation costs attributable to the construction or reconstruction of push-up or natural soil greens, the ruling reaches a different conclusion regarding the treatment of the costs of land preparation undertaken in the construction or reconstruction of modern golf course greens. This guidance provides direction to examiners in applying the rationale of Rev. Rul. 2001-60, as applicable, to other golf course land improvements, namely tees, bunkers, fairways, and roughs.
- (3) Rev. Rul. 2001-60 considers the costs of land preparation undertaken in the construction or reconstruction of the two types of golf course greens currently in use, i.e., the "push-up" or "natural soil green" and the "modern green." The modern green is a land improvement designed to facilitate drainage. Construction or reconstruction of the modern green begins after general earth moving, grading, and initial shaping of the area surrounding and underneath the modern green. Modern greens are constructed with a network of subsurface drainage tiles or pipes, one or more layers of gravel and/or sand particles, a rootzone layer, and a variety of turfgrass.
- (4) Rev. Rul. 2001-60 holds that the costs of land preparation undertaken by a taxpayer in the original construction or reconstruction of modern greens that is so closely associated with depreciable assets, such as underground drainage tiles or pipes, that the land preparation will be retired, abandoned, or replaced contemporaneously with those depreciable assets, are to be capitalized and depreciated over the recovery period of the depreciable assets with which the land preparation is associated.
- (5) The ruling further holds that subsequent operating expenses for sod, seed, soil, and other sundry maintenance are ordinary and necessary business expenses that are deductible from gross income for federal income tax purposes.
- (6) However, with respect to the costs attributable to the construction or reconstruction of "push-up" or "natural soil" greens, examiners should be mindful that the IRS will continue to follow the holdings in Rev. Rul. 55-290 and *Edinboro Company v. United States*, 224 F. Supp. 301, 63-2 USTC ¶19759 (W.D. Pa. 1963). In these cases, the land preparation costs are inextricably associated with the land and, therefore, are added to the cost basis of the land and are not depreciable.

4.30.2.8.1.2
(02-24-2025)
Land

- (1) A basic tenet in tax law is that land is not depreciable. Examiners shall not construe Rev. Rul. 2001-60 or this guidance to mean that the land acquisition cost is depreciable. That cost is clearly non-depreciable.

- (2) In addition, the costs of general earthmoving, grading, and shaping of all golf course land improvements are also not depreciable. These costs are attributable to land preparation that is inextricably associated with the land and are, thus, added to the taxpayer's cost basis in the land and not depreciable.

4.30.2.8.1.3
(02-24-2025)
Bunkers

- (1) During the examination of a taxpayer who operates a golf course, examiners may encounter land preparation costs attributable to the construction or reconstruction of bunkers. Bunkers are hazards that contain either grass or sand. Some bunkers are nothing more than a contoured area of the fairway and the costs of land preparation attributable to the creation of these types of bunkers are not subject to depreciation because the land preparation is inextricably associated with the land.
- (2) When examining the bunker portion of a golf course, examiners should ascertain whether the bunker is constructed in a manner similar to a modern green as described in Rev. Rul. 2001-60. If so, the land preparation costs would be capitalized and subject to depreciation, using the same recovery period as the underlying depreciable asset. Thus, if the bunker contains underlying depreciable assets that, if replaced, would result in the contemporaneous retirement, abandonment or replacement of the elements above the depreciable assets, then, the cost of the land preparation above the underlying depreciable assets is depreciable.
- (3) A sand bunker may be lined with a depreciable barrier material and/or have an underlying system of networked depreciable drain tiles or pipes. The land preparation costs of this bunker are eligible for depreciation as a land improvement. The elements of this bunker subject to depreciation would be the liner and/or drain tiles or pipes and associated land preparation lying directly above the depreciable asset.

4.30.2.8.1.4
(02-24-2025)
Tees

- (1) Examiners will find that tees generally consist of level elevated soil (also referred to as "tee-boxes") with minimal infrastructure. Similar to a push-up green, costs associated with a push-up tee are not depreciable. However, some tees may be constructed with drain tiles or pipes to control drainage onto other portions of the course. The only element of this type of tee subject to depreciation would be the drain tiles or pipes and associated land preparation lying directly above the pipes.
- (2) If an examiner determines that a tee is constructed in a manner similar to the modern green as described in Rev. Rul. 2001-60, the land preparation costs would be capitalized and subject to depreciation. Thus, if the tee contains underlying depreciable assets that, if the underlying depreciable assets were replaced, would result in the contemporaneous retirement, abandonment or replacement of the elements above the depreciable assets, then, the cost of the land preparation above the underlying depreciable assets is depreciable.

4.30.2.8.1.5
(02-24-2025)
Fairways

- (1) Examiners will find that a fairway is generally a contoured, well-maintained grass area that extends from the tee to the green. The costs of general earthmoving, grading, and shaping of fairways are not depreciable land preparation costs. Similarly, the costs of final grading, preparation, seed (including any grow-out period costs), and sod are not depreciable land preparation costs. These costs are attributable to land preparation that is inextricably associated with the land and, therefore, are added to the taxpayer's cost basis in the land.

- (2) Some fairways may have underlying depreciable irrigation and drainage pipes. The cost of land preparation (e.g., seed, sod, and fertilizer) immediately above the pipes that would be retired, abandoned, or replaced contemporaneously with the underlying asset is depreciable over the same recovery period as the underlying asset.

Example: A golf course has a 6-inch underlying drainage pipe that carries runoff to holding ponds. The removal of the drainage pipe would require a 12-inch wide ditch. The depreciable costs would be the land preparation costs of 12 inches of fairway surface times the length of the pipe running through the fairway. If there were 30,000 feet of pipe being installed, 30,000 square feet of land preparation costs would be depreciable.

4.30.2.8.1.6
(02-24-2025)
Roughs

- (1) Roughs are generally uneven areas covered with high grass, brush, and stones bordering golf course fairways. When examining these parts of a golf course, examiners will generally conclude the land preparation costs of creating the roughs are not depreciable. The costs of creating these areas are attributable to land preparation that is so inextricably associated with the land that the costs are added to the taxpayer's cost basis in the land and are not depreciable.
- (2) However, if there are drainage or irrigation pipes underlying the rough, land preparation costs are subject to depreciation to the extent the land preparation above the pipes would be retired, abandoned, or replaced contemporaneously with the installing or reinstalling of the pipes.

4.30.2.8.1.7
(02-24-2025)
Change in Method of Accounting

- (1) Examiners are reminded that any change in a taxpayer's treatment of the cost of golf course land improvements is a change in method of accounting to which the provisions of IRC Sections 446 and 481 and the regulations thereunder apply.

4.30.2.8.1.8
(02-24-2025)
Effect on Other Guidance

- (1) This guidance should be applied in the context of other applicable depreciation principles regarding the depreciation of land improvements under IRC 167 and IRC 168. Examiners should apply the applicable principles in determining the depreciability of other golf course land improvements not discussed above. As is the case with any issue, examiners are encouraged to exercise their professional judgement and authority in developing and resolving factual issues.

4.30.2.8.1.9
(02-24-2025)
Contacts

- (1) If you have any questions, please contact the Deductible and Capital Expenditures and Methods of Accounting and Timing Practice Networks using the *LB&I Request Tracker*.

4.30.2.8.2
(02-24-2025)
Golf Course Land Improvements - Change in Accounting Method

- (1) LB&I released **Audit Procedures for Golf Course Land Improvements - Change in Accounting Method**, on February 25, 2002 (no control number). The Directors of Enterprise Activities Practice Area and Western Compliance Practice Area are responsible for the policies and procedures in this IRM subsection.
- (2) With the release of Rev. Rul. 2001-60, 2001-51 I.R.B. 587, examiners should expect taxpayers to file Forms 3115, Application for Change in Accounting Method, to conform their treatment of the costs of modern golf course greens to that of the ruling. The ruling allows for depreciation under IRC Sections 167

and 168 of certain land preparation costs in the original construction or reconstruction of modern golf course greens. The ruling represents a substantial change in the treatment of such costs. In the past, the IRS relied on Rev. Rul. 55-290, 1955-1 C.B. 320. Rev. Rul. 55-290 provided that expenditures incurred by a taxpayer in the original construction of golf course greens are capital expenditures that should be added to the original cost of the land and are not subject to an allowance for depreciation. Although Rev. Rul. 2001-60 reaches a different conclusion than that of Rev. Rul. 55-290 with respect to the construction of the modern golf course green, Rev. Rul. 2001-60 will continue to apply the holding of Rev. Rul. 55-290 to the construction of the push-up or natural soil green.

- (3) If you have any questions please contact the *LB&I Deductible and Capital Expenditures* and Methods of Accounting and Timing Practice Networks.

4.30.2.8.2.1
(02-24-2025)
Exam Considerations

- (1) The following items should be considered during examinations of taxpayers who changed their method of accounting for modern greens to follow Rev. Rul. 2001-60, or taxpayers who are otherwise depreciating golf course land improvements.
- (2) Determine the type of green or other land improvement being depreciated. Modern greens and other modern golf course improvements have depreciable components, such as underground drainage tiles or pipes, that are included in Rev. Proc. 87-56, Asset Class 00.3, Land improvements. Land preparation costs so closely associated with these depreciable components that they will be retired, abandoned, or replaced contemporaneously with those assets are also depreciable pursuant to Rev. Rul. 2001-60.

Note: In contrast, land preparation costs in the construction or reconstruction of push-up or natural soil greens are associated with the land and are not subject to depreciation. They are still governed by the rationale of Rev. Rul. 55-290. Similarly, land reparation costs for general grading and shaping, constructing or reconstructing push-up tees, or in contouring fairways to construct or reconstruct bunkers, are not subject to depreciation.

- (3) If the examiner determines that the taxpayer has capitalized and is depreciating costs associated with the construction of modern golf course land improvements such as greens, the examiner should identify the components associated with the land improvements. This can be accomplished by requesting the following information:
- A copy of the depreciation schedule listing components and costs being depreciated.
 - A copy of the architectural plans with a breakdown of the components, if available.
- (4) Examiners should determine if the taxpayer is using the proper recovery period. Qualifying land preparation costs associated with modern greens and other golf course components have a recovery period of 15 years.
- (5) If the land preparation costs being depreciated include the cost for sod, seed or soil, examiners should determine whether these items were previously deducted as operating expenses. If such expenses were previously deducted, they should not be included as part of the assets being depreciated.

- (6) Examiners should review the books and records to determine if expenses for general earthmoving, grading, and initial shaping of the area surrounding and underneath the modern green and other golf course components that occurred before the construction of the land improvements have been included in the taxpayer's non-depreciable cost basis in land or if they have been included with depreciable land improvements. If they have been allocated to the cost of the depreciable land improvements, examiners should reallocate the costs to the taxpayer's non-depreciable basis in the land.
- (7) Examiners should read and follow IRM 4.30.2.8.1, Depreciable Golf Course Land Improvements, to determine whether the taxpayer is allowed cost recovery for other golf course land improvements associated with tees, bunkers, fairways and roughs.
- (8) Examiners should be aware of the provisions of Rev. Proc. 2002-9, 2002-3 I.R.B. 327, regarding a taxpayer's change in method of accounting to conform treatment of the costs of modern golf course greens to that of Rev. Rul. 2001-60. Examiners should be aware of the automatic method change described in section 6.01 of Rev. Proc. 2024-23, 2024-23 I.R.B. 1334, for a taxpayer that wants to change from an impermissible to a permissible method of accounting for depreciation or amortization for any item of depreciable or amortizable property. A taxpayer must use this section when filing a Form 3115 under the automatic method change procedures of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, to conform treatment of the costs of modern golf course greens to that of Rev. Rul. 2001-60.
- (9) Examiners are reminded that any change in a taxpayer's treatment of the cost of golf course land improvements is a change in method of accounting to which the provisions of IRC 446 and 481 and the regulations thereunder apply.

4.30.2.9
(02-24-2025)
Insurance

- (1) LB&I released 3 directives on the general topic of the insurance industry.
- (2) 2 of the directives are incorporated below in this topic subsection.
- (3) 1 of the directives is related to bad debts in the insurance industry and thus is incorporated under the bad debts subsection, IRM 4.30.2.4.2.

4.30.2.9.1
(02-24-2025)
**Hedging of Variable
Annuity Guaranteed
Minimum Benefits by
Insurance Companies**

- (1) LB&I released **IRC 446: LB&I Directive Related to Hedging of Variable Annuity Guaranteed Minimum Benefits (GMxB) by Insurance Companies**, dated July 17, 2014 (Control No. LBI-04-0514-0050). The Director, Enterprise Activities Practice Area is responsible for the policies and procedures in this IRM subsection.
- (2) This guidance provides that LB&I examiners should not challenge the eligibility of an insurance company's guaranteed minimum benefit ("GMxB") hedges (defined below) to qualify as hedging transactions under Treas. Reg. 1.1221-2(b). In addition, this guidance provides that LB&I examiners should not challenge an insurance company's:
 - a. mark-to-market ("MTM") values of eligible GMxB hedges (defined below) if they conform to the MTM values reported in the company's annual statement (defined below); and

- b. should not challenge the method of accounting described in this guidance for income, deductions, gains, and losses relating to eligible GMxB hedges for variable annuity ("VA") contracts issued before December 31, 2009.
- (3) This guidance is intended to provide an efficient and uniform method of accounting for certain GMxB hedge income, deductions, gains and losses, which would allow LB&I and taxpayers to more efficiently manage their audit resources.
- (4) This guidance applies only to the portion of the aggregate net eligible GMxB hedge gain or loss related to the VA contracts issued before December 31, 2009. Eligible GMxB Hedge gain or loss related to the VA contracts issued on or after December 31, 2009 should be accounted for using a method consistent with the matching requirements in Treas. Reg. 1.446-4(e)(1). Additionally, if an insurance company does not meet the requirements of this Directive, regular audit procedures will apply to GMxB Hedges for all of the company's VA contracts.
- (5) To see a full copy of the guidance, go to Exhibit 4.30.2-9.

4.30.2.9.2
(02-24-2025)
**Principle Based
Reserves for Variable
Annuity Contracts and
Life Insurance Contracts**

- (1) LB&I released **IRC 807: LB&I Directive Related to Principle Based Reserves for Variable Annuity Contracts (AG 43/VM-21) and Life Insurance Contracts (VM-20)**, dated August 24, 2018 (Control No. LBI-04-0818-015). The Director, Enterprise Activities Practice Area is responsible for the policies and procedures in this IRM subsection.
- (2) This guidance provides that LB&I examiners should not challenge an insurance company's determination of tax reserves for certain variable annuity contracts and certain life insurance contracts, if the insurance company reports its tax reserves for 2017 in compliance with this guidance.
- (3) The scope of this guidance is limited to:
 - Variable annuity contracts subject to the reserve method in Actuarial Guideline XLIII (AG 43) and Valuation Manual, part 21 (VM-21) for statutory accounting purposes.
 - Life insurance contracts subject to the reserve method in Valuation Manual, part 20 (VM-20) for statutory accounting purposes and for which the insurance company implemented VM-20 in 2017.
- (4) If an insurance company does not satisfy the requirements of this guidance for such variable annuity and life insurance contracts, regular audit procedures apply.
- (5) Except as otherwise specifically provided herein, nothing in this guidance should be construed as affecting the operation of any other provision of the Internal Revenue Code, regulations or guidance thereunder. No inferences should be drawn from this guidance that any deduction is allowed for asset adequacy reserves or deficiency reserves.
- (6) To see the remainder of this guidance, go to Exhibit 4.30.2-11.

4.30.2.10
(02-24-2025)

Mark-to-Market Valuation

- (1) LB&I released **IRC 475 Field Directive related to Mark-to-Market Valuation**, dated April 14, 2011 (Control No. LBI-04-1110-033). The Director, Enterprise Activities Practice Area is responsible for the policies and procedures in this IRM subsection.
- (2) This guidance provides that LB&I examiners should not challenge mark-to-market values reported on a qualified financial statement for the tax valuation requirement of IRC 475. This guidance applies to all taxpayers who are required to, or elect to, mark-to-market securities and/or commodities under IRC 475 and are required to file a financial statement with the U.S. Securities and Exchange Commission (SEC) under section 13(a) or 15(d) of the Securities and Exchange Act of 1934, and/or under Rule 17a-5 or Rule 17a-12 promulgated thereunder.

Note: 15 U.S.C.S 78m, 78o, 17 C.F.R. 240-17a-12, 240.17a-5.

- (3) The financial accounting valuation requirements for marking to market values that are reported on qualified financial statements are substantially similar to the valuation requirements under IRC 475. In addition, independently valuing securities and commodities subject to IRC 475 imposes a significant administrative burden on both taxpayers and LB&I.
- (4) Therefore, in an effort to balance current resources and workload priorities, LB&I examiners are directed not to challenge mark-to-market values reported on a qualified financial statement for the tax valuation requirement of IRC 475 if the requirements set forth in this guidance are satisfied. If a taxpayer has a tax valuation requirement under IRC 475, but does not meet the requirements of this guidance, traditional audit procedures will apply.

4.30.2.10.1
(02-24-2025)

Background

- (1) IRC 475 requires dealers in securities to mark their securities to market. IRC 475 allows traders in securities or commodities, as well as dealers in commodities, to elect to mark-to-market their securities or commodities to market annually. Traditionally, gains and losses are deferred until disposition, but the mark-to-market provisions of IRC 475 require income recognition without realization. Thus, if a security or commodity subject to IRC 475 is held at the end of the taxable year, it must be treated as if it were sold on the last business day of the taxable year for its fair market value and the appropriate gain or loss must be recognized.
- (2) For many securities and/or commodities that are subject to IRC 475, no readily available public valuation benchmarks, such as public price quotations, exist. Taxpayers value these instruments internally, using highly subjective and complex mathematical models. Generally, valuation audits are extremely burdensome for both taxpayers and LB&I because of the subjectivity of valuation and the need for significant resources to verify the taxpayer's determinations. Valuation audits of complex, non-publicly traded securities and/or commodities are additionally burdensome because of the complexity of valuation. Further, individual taxpayers may have a significant volume of such securities and/or commodities that are required by IRC 475 to be valued annually. For example, a large financial services firm may have thousands of non-publicly traded securities that must be valued annually for purposes of computing IRC 475 mark-to-market losses and gains. Currently, conducting an IRC 475 mark-to-market valuation audit of such taxpayers requires a substantial commitment of limited LB&I audit resources.

- (3) For financial accounting purposes, many taxpayers subject to IRC 475 are required to value these same securities and/or commodities and report these values to the SEC. To improve the administrability of the valuation requirements of IRC 475, LB&I should accept mark-to-market values reported on a qualified financial statement if the taxpayer follows the requirements outlined below.

4.30.2.10.2
(02-24-2025)

Issue Tracking

- (1) Any cases having this issue should use the following ITAC tracking code: ITAC 4475: Industry Directive on IRC 475 Valuation.

4.30.2.10.3
(02-24-2025)

Examination Guidance

- (1) For taxpayers who are required or elect to mark-to-market securities and/or commodities under the provisions of IRC 475, LB&I examiners should accept mark-to-market values reported on a qualified financial statement for the tax valuation requirement of IRC 475. Taxpayers must use the mark-to-market values reported on a qualified financial statement for all securities and/or commodities that are subject to the tax valuation requirement of IRC 475.
- (2) A taxpayer currently under examination may not have used their mark-to-market values reported on qualified financial statements for the tax valuation requirement of IRC 475, but would like to change to that method under the provisions of this guidance. For such a taxpayer, LB&I examiners, in consultation with the taxpayer, will decide the most appropriate way to make the change.
 - a. Change the taxpayer's method of accounting for the taxable year under examination to one that is consistent with this guidance.
 - b. Allow the taxpayer to request advance consent to change their method to one that is consistent with this guidance for the current taxable year.

Note: With respect to an advance consent change, LB&I would grant the taxpayer consent under Rev. Proc. 2015-13 to request the voluntary change in method of accounting. In addition, for any taxpayer requesting an advance consent, attaching a completed certification statement (described below) to their Form 3115 will generally satisfy the documentation requirements of Lines 21 and 22 of Form 3115.

- (3) Upon examination, if a taxpayer has used its mark-to-market values reported on a qualified financial statement for the tax valuation requirement of IRC 475, the taxpayer must sign and complete Exhibit 4.30.2-13, Certification Statement for IRC 475 Valuation (Certification Statement). A taxpayer must complete all sections of the certification statement, must have the certification statement signed by an authorized individual, and must provide the certification statement to the LB&I examiner within 30 days of a request for the certification statement. A separate certification statement may be requested for each tax year under audit. A LB&I examiner will consider any taxpayer not in compliance with these requirements ineligible for this guidance and subject to traditional audit procedures.
- (4) The certification statement must be signed by an individual who is authorized to execute the taxpayer's federal income tax return for the taxable year under audit, and must certify, under penalty of perjury, that, for the tax year under audit, the taxpayer's mark-to-market values reported on its qualified financial statements are consistent with the IRC 475 values for the same securities

and/or commodities reported on the taxpayer's federal income tax return for the relevant taxable year. Taxpayers should retain the underlying financial accounting valuation documentation that would permit the LB&I examiner to reconcile the taxpayer's financial accounting mark-to-market values with the taxpayer's tax mark-to-market values. If a taxpayer fails to properly and timely submit a certification statement or if a taxpayer fails to timely submit requested valuation documentation that would permit the examiner to reconcile the taxpayer's financial accounting values with the taxpayer's tax mark-to-market values, then the director of field operations or their delegate may determine that this guidance does not apply to the taxpayer.

4.30.2.10.4
(02-24-2025)
Definitions

- (1) **Qualified Financial Statements:** A qualified financial statement is a financial statement that is required to be filed with the SEC under Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, and/or under Rule 17a-5 or Rule 17a-12 promulgated thereunder.
- (2) **Certification Statement:** To be eligible for this guidance, a taxpayer must certify that their mark-to-market values reported on a qualified financial statement are the same values being used for the tax valuation requirement of IRC 475. Upon audit, this certification must be completed on the attached certification statement and must be provided to an LB&I examiner within 30 days of a request. For corporations, the certification must be signed by an individual authorized under IRC 6062. For partnerships, the certification must be signed by an individual authorized under IRC 6063. All certification statements must be signed under penalties of perjury.

4.30.2.10.5
(02-24-2025)
FAQs and Contacts

- (1) Frequently Asked Questions for IRC 475.

No.	Question	Answer
1.	<p>Is a taxpayer eligible for the IRC 475 guidance related to Mark-to-Market Valuation if:</p> <ol style="list-style-type: none"> a. The taxpayer uses the same mark-to-market values reported on its qualified financial statements for all securities and/or commodities that are subject to the tax valuation requirement of IRC 475, but b. The taxpayer has made Schedule M adjusting entries or other book-to-tax adjusting entries, or has reported deferred tax assets, deferred tax liabilities, or valuation allowances (under FAS 109/ASC 740) with respect to such securities and/or commodities? 	<p>A taxpayer is eligible for the guidance if:</p> <ol style="list-style-type: none"> a. The taxpayer uses the same mark-to-market values reported on its qualified financial statements for all securities and/or commodities that are subject to the tax valuation requirement of IRC 475, and b. The taxpayer has made Schedule M adjusting entries or other book-to-tax adjusting entries, or has reported deferred tax assets, deferred tax liabilities, or valuation allowances (under FAS 109/ASC 740), with respect to such securities and/or commodities that are not related to any inconsistencies in value between the mark-to-market values reported on its qualified financial statements and the IRC 475 mark-to-market values reported for Federal income tax purposes.

No.	Question	Answer
2.	Is a taxpayer eligible for the guidance if the taxpayer does not have mark-to-market values reported on its qualified financial statements for some of its securities and/or commodities?	Yes. The taxpayer is eligible for this guidance for all other securities and/or commodities that are subject to the tax valuation requirement of IRC 475 and for which mark-to-market values are reported on its qualified financial statements, as long as the mark-to-market values of those other securities and/or commodities reported on the taxpayer's qualified financial statements are used for securities and/or commodities that are subject to the tax valuation requirement of IRC 475. For those securities and/or commodities that the taxpayer does not have mark-to-market values reported on the qualified financial statements, traditional valuation audit procedures will apply.
3.	Is a taxpayer required to use the same mark-to-market values reported on its qualified financial statements for all of its securities and/or commodities that are subject to the tax valuation requirement of IRC 475 to be eligible for this guidance?	Yes. If the taxpayer has mark-to-market values for securities and/or commodities reported on its qualified financial statements and does not use those values for some of its securities and/or commodities that are subject to the tax valuation requirement of IRC 475, then the taxpayer is ineligible for this guidance for all of its securities and/or commodities and traditional valuation audit procedures will apply.
4.	For a taxpayer who is under this guidance, does a subsequent change in taxpayer's method of valuation for determining its mark-to-market values for its securities and/or commodities for financial statement purposes require that a Form 3115 be filed to obtain consent to use that subsequent valuation method for tax purposes.	Under this guidance, for tax purposes, a taxpayer must use the same mark-to-market values reported on its qualified financial statements for all securities and/or commodities that are subject to IRC 475. Because the valuation requirements for marking to market to arrive at fair value are substantially similar to the valuation requirements under IRC 475 of marking to market to arrive at fair market value, under this guidance, the IRS accepts taxpayer's values for its securities reported on its financial statement as its values for tax purposes. The purpose of this guidance is to balance current resources and workload priorities and to provide an administrable solution for difficult and resource-intensive issues. That same principle should also apply in handling changes made to valuation methodologies for financial statement purposes by a taxpayer subject to this guidance. It is anticipated that the Office of Chief Counsel will issue guidance regarding the issue above. Pending the issuance of that guidance, agents should not challenge the valuations based upon the lack of a Form 3115, provided those valuations comply with the provisions in this guidance.

- (2) Questions concerning this guidance should be directed to the Financial Instruments Practice Network on the *Financial Institutions & Products Knowledge Base*.

4.30.2.11
(02-24-2025)
**Multiple Parties in
Intermediary Transaction
Tax Shelter**

- (1) LB&I released **Examination of Multiple Parties in Intermediary Transaction Tax Shelters as described in Notice 2001-16**, dated January 12, 2006 (no control number).

4.30.2.11.1
(02-24-2025)
Background

- (1) Intermediary Transaction tax shelters are described in Notice 2008-111, which clarifies Notice 2001-16, and supersedes Notice 2008-20. As described in Notice 2001-16, an Intermediary Transaction generally involve four parties: a seller (**X**), who desires to sell the stock of a target corporation (**T**), a promoter-controlled intermediary entity (**M**), and a buyer (**Y**) who desires to purchase the assets, but not the stock, of **T**.
- (2) As clarified by Notice 2008-111, an Intermediary Transaction involves a corporation (**T** or its successors) that would have a federal income tax obligation with respect to the disposition of assets the sale of which would result in taxable gain (built-in gain assets) in a transaction that would afford the acquiror or acquirors (**Y**) a cost or fair market value basis in the assets. An Intermediary Transaction is structured to cause the tax obligation for the taxable disposition of the built-in gain assets to arise, in connection with the disposition by shareholders of **T** (**X**) of all or a controlling interest in **T**'s stock, under circumstances where the person or persons primarily liable for any federal income tax obligation with respect to the disposition of the built-in gain assets will not pay that tax (the Plan).
- (3) As clarified by Notice 2008-111, an Intermediary Transaction is defined in terms of the Plan and objective components. A transaction is treated as an Intermediary Transaction with respect to a particular person only if that person engages in the transaction pursuant to the plan (as defined in sections 2 and 4 of Notice 2008-111), the transaction contains the four objective components indicative of an Intermediary Transaction (as set forth in section 3 of Notice 2008-111), and no safe harbor exception (as set forth in section 5 of Notice 2008-111) applies to that person.

4.30.2.11.2
(02-24-2025)
Compliance Measure

- (1) There are two compliance measures to consider. Each is further discussed below.

4.30.2.11.2.1
(02-24-2025)
**Determining a Liability
and Recasting
Transaction**

- (1) A thorough examination of an Intermediary Transaction tax shelter requires scrutiny into each aspect of the transaction, including contacting each of the parties involved, to determine the true nature of the transaction. Based on the results of the examination, it may be appropriate to treat **M** as a mere conduit, thus enabling the IRS to either (1) recast the transaction as an asset sale by **T** to **Y**, followed by a distribution of the sale proceeds to **X**, or (2) recast the transaction as a purchase by **Y** of **T**'s stock followed by a liquidation of **T** into **Y**. See the *Intermediary Transaction Tax Shelter Coordinated Issue Paper*, December 19, 2002, for further recommendations as to case development.
- (2) Examiners should examine the return of the intermediary entity as part of any determination of the proper tax treatment of the overall transaction, as well as any determination of the correct tax liability of the target corporation as a result of the transaction. Examiners should bear in mind, however, that the intermediary itself is unlikely to serve as a source of collection for any tax liability. Experience with these transactions has shown that the intermediary usually

has little or no collectible assets. The returns of the original shareholders of target corporations and the ultimate purchasers of the assets should also be thoroughly examined consistent with any recast of the transaction in each particular case.

4.30.2.11.2.2
(02-24-2025)
Transferee Liability

- (1) After an Intermediary Transaction has been thoroughly examined, consistent with any appropriate recast of the transaction, and determinations of tax liability have been made, examiners should consider transferee liability if it appears that transferee liability may be the only possible way to obtain collection. Transferee liability is secondary liability for another's unpaid taxes. Transferee liability does not stand on its own because although an assessment against a transferor (who has primary liability) is not always necessary, transferee liability always requires that the IRS have first determined the transferor's liability, including the amount. As a secondary collection tool, transferee liability should not be at the forefront of an examination of an Intermediary Transaction tax shelter. The potential for transferee liability, however, should not be ignored—ultimately transferee liability may be the only way for the IRS to recover a determined tax liability that is otherwise uncollectible. Nevertheless, until the IRS has determined the tax treatment of a transaction, including any recast, and determined that one or more transaction participants has a tax liability and has transferred assets to a transferee, a transferee examination is premature. When examiners reach that point and are considering transferee liability, they should be guided in a transferee liability examination by IRM 4.11.52, Transferee Liability Cases. See also IRM 5.17.14, Fraudulent Transfers and Transferee and Other Third Party Liability.
- (2) The elements of transferee liability are:
 - a. A transfer was made from a taxpayer to a transferee.
 - b. The taxpayer has a tax liability.
 - c. The transfer occurred during or after the taxable period in which the taxpayer's liability accrued.
 - d. The transferee is liable either at law or in equity for the taxpayer's unpaid liability.
 - e. Efforts to collect from the taxpayer have been exhausted or would be futile.
- (3) As stated in IRM 4.11.52.4, the IRS has the burden of proving these elements. Whether transferee liability is present will depend on all of the facts of an Intermediary Transaction, as well as the IRS's treatment of the transaction, the taxability of gains from the transaction, and the allowance of tax benefits, such as losses. For transferee liability, there must be both an underlying factual and legal basis (see the "Types of Transferee Liability" described in IRM 4.11.52.2 and the discussion of federal and state law in IRM 5.17.14).
- (4) As an example, assume that after examining an Intermediary Transaction, an examiner concludes that a sale of target stock to an intermediary was in substance a sale of the target corporation's assets to a third-party buyer, with the intermediary acting as an accommodation party. Moreover, the payment to the shareholders in the purported sale of the target stock was a disguised distribution (transfer) to the shareholders of the proceeds of the asset sale. Additionally, the examiner also determines that the target corporation incurred a tax liability on the re-characterized asset sale, and the target corporation and the intermediary are unlikely to have assets with which to pay the liability. The examiner should consider whether a basis exists for the liability of the share-

holders as transferees of a fraudulent transfer under applicable state or federal law if the transaction was actually intended to be fraudulent or rendered the target corporation and/or intermediary insolvent and fair consideration was not exchanged for the transfer.

- (5) As the example demonstrates, at the point where transferee liability is a consideration in an examination, it is important to follow all transfers of the target corporation's assets (sometimes through the intermediary) to the other participants in the transaction in order to identify potential transferees. A party to the transaction that has received a transfer of cash or other property of the target corporation is potentially liable as a transferee. In Intermediary Transaction tax shelters, each of the central players may be a potential transferee: (1) the original shareholders of the target corporation who, when the transaction is recast as an asset sale, may be deemed to have received the bulk of the proceeds from the sale of the target corporation's assets; (2) the buyer (Y), to the extent, for example, Y has paid less than reasonably equivalent value for the target's assets, or in a stock sale recast if the target incurs a tax liability on its distribution of assets to Y; (3) the promoter to the extent that it has been paid a fee to set up the tax avoidance transaction; and (4) those persons or entities paid a fee for facilitating the transaction, such as consultants, accommodation parties, attorneys, and accountants, inasmuch as the fees paid to them were for non-existent services or were disproportionate to the generally accepted commercial rates for any services actually performed.
- (6) If the examiner develops a case which, on its face, supports the assertion of transferee liability against a party or participant, a decision to proceed with the assertion of transferee liability should be based on any preexisting position the IRS has taken with regard to the transaction and the transferor's liability. As a result, the IRS's characterization of the facts and their significance for purposes of transferee liability should be consistent with and not contrary to the IRS's position on the primary liability, especially if the position has been advanced in a notice of deficiency or in litigation. If the position changes or is rejected in litigation, then any transferee liability case may have to be changed accordingly (such as when the IRS position shifts to an alternative theory) or even abandoned. Examiners should always coordinate and consult with Counsel anytime the assertion of transferee liability is contemplated in connection with an Intermediary Transaction.

4.30.2.11.3
(02-24-2025)

Contact

- (1) If you have any questions, please coordinate with your local Counsel.

4.30.2.12
(02-24-2025)

Research Credit

- (1) LB&I released multiple directives related to the general topic of research credit. For additional information on the examination of the research credit, see the *LB&I general business and energy credits knowledge base homepage* and the *research credit page on irs.gov*.

4.30.2.12.1
(02-24-2025)

Amended Returns and Refund Claims Containing Invalid IRC 280C(c)(3) Elections

- (1) LB&I released **Amended Returns/Refund Claims Containing Invalid IRC 280C(c)(3) Elections**, dated August 26, 2005 (no control number). The Director, Enterprise Activities Practice Area is responsible for the policies and procedures in this IRM subsection.
- (2) The purpose of this guidance is to inform LB&I examiners that an IRC 280C(c)(3) election (280C(c)(2) for tax years beginning after December 31,

2021) must be filed with an original return for the taxable year filed on or before the due date (including extensions) for filing the income tax return for such year, regardless of whether any research credits are claimed on the original return. An election, once made for any taxable year, is irrevocable for that taxable year and may not be made on an amended return.

4.30.2.12.1.1
(02-24-2025)
Applicable Law

- (1) IRC 41 provides for a research credit. IRC 280C(c) applies to tax years beginning after December 31, 1988. For tax years ending before January 1, 2022, IRC 280C(c)(1) provides that, in general, no deduction is allowed for that portion of the qualified research expenses (as defined in IRC 41(b)) or basic research expenses (as defined in IRC 41(e)(2)) otherwise allowable as a deduction for the taxable year that is equal to the amount of the credit determined for such taxable year under IRC 41(a). Under paragraph (2), the same rule applies to capitalized expenses.
- (2) For tax years beginning after December 31, 2021, IRC 280C(c)(1) provides that if the amount of the credit for a taxable year determined under IRC 41(a)(1) exceeds the amount allowable as a deduction for that taxable year for qualified research expenses or basic research expenses, then the amount chargeable to the capital account for such expenses shall be reduced by the amount of the excess.
- (3) For tax years ending before January 1, 2022, IRC 280C(c)(3)(A) provides for an annual election for a reduced research credit. IRC 280C(c)(3)(C) provides that an election under this paragraph shall not be made any later than the time for filing the return for tax for the year the credit is claimed, including extensions. Treas. Reg. 1.280C-4(a) provides that the election shall be made by claiming the reduced credit on an original return for the taxable year, filed at any time on or before the due date (including extensions) for filing the income tax return for such year. IRC 280C(c)(3)(C) further provides that such an election, once made is irrevocable. See also Treas. Reg. 1.280C-4(a).
- (4) For tax years beginning after December 31, 2021, IRC 280C(c)(2) provides for an annual election for a reduced research credit. IRC 280C(c)(2)(C) provides that an election under this paragraph shall not be made any later than the time for filing the return for tax for the year the credit is claimed, including extensions. Treas. Reg. 1.280C-4(a) provides that the election shall be made by claiming the reduced credit on an original return for the taxable year, filed at any time on or before the due date (including extensions) for filing the income tax return for such year. IRC 280C(c)(2)(C) further provides that such an election, once made is irrevocable. See also Treas. Reg. 1.280C-4(a).

4.30.2.12.1.2
(02-24-2025)
Treatment of Amended Returns/Refund Claims Containing Invalid IRC 280C(c)(3) Elections

- (1) For tax years ending before January 1, 2022, a taxpayer who failed to make a timely election for the reduced research credit under IRC 280C(c)(3)(A), avoiding the correlative reduction in otherwise deductible expenses under IRC 280C(c)(1) and (c)(2), is precluded from making such an election on an amended return/claim for refund. The Code and the Treasury Regulations are clear; such an election may only be made on a timely-filed original return (with extensions). IRC 280C(c)(3)(C); Treas. Reg. 1.280C-4(a).
- (2) For tax years beginning after December 31, 2021, a taxpayer who failed to make a timely election for the reduced research credit under IRC 280C(c)(2), avoiding the correlative reduction in otherwise deductible expenses under IRC 280C(c)(1), is precluded from making such an election on an amended return/

claim for refund. The IRC and the Treasury Regulations are clear; such an election may only be made on a timely-filed original return (with extensions). IRC 280C(c)(2)(C); Treas Reg. 1.280C-4(a).

- (3) Where such an invalid election is identified, the examiner shall bring this issue to the taxpayer's attention and afford it the opportunity, if available, to further amend its amended return/claim for refund by properly recomputing its research credit under IRC 280C(c)(1) and (c)(2). Such an amendment must comply with the specific requirements for such claims. On March 31, 2008, Notice 2008-39, Credit for Increasing Research Activities: Filing Address and Requirements for Certain Claims for Credit or Refund was issued superseding Notice 2002-44. This notice requires all Form 1120 taxpayers, except those required to file electronically, to file their claims for the refund credit directly with the Ogden Service Center. See IRM 4.46.3.7.6, Determining the Validity of Refund Claims that Include a claim for the Credit for Increasing Research Activities, for procedural guidance applying to claims for refund that include a claim for research credit.

Note: Team Managers shall no longer have the discretion to directly receive claim for refund that corrects a prior invalid IRC 280C(c)(3) election. (or 280C(c)(2) election for tax years beginning after December 31, 2021).

- (4) If a taxpayer fails to properly amend a claim for refund to comport with the requirement of IRC 280C(c), the claim shall be disallowed.

4.30.2.12.1.3
(02-24-2025)
IRC 280C Penalty Issues

- (1) LB&I has become aware of numerous tax returns and studies, prepared by practitioners, that contain invalid IRC 280C(c)(3) elections (or 280C(c)(2) election for tax years beginning after December 31, 2021). In the case of an invalid IRC 280C(c)(3) election, exam should review the facts and consider penalty assessment. See IRC 6694 and IRC 6701.

4.30.2.12.1.4
(02-24-2025)
IRC 280C Practice Issues

- (1) Practitioners who make invalid IRC 280C(c)(3) elections (or 280C(c)(2) election for tax years beginning after December 31 2021) on amended returns/claims for refunds, and/or who advise taxpayers to do so, are taking positions that are directly contrary to both the Code and long-standing Treasury Regulations. Accordingly, referral of such conduct to the IRS Office of Professional Responsibility (OPR) is warranted.

4.30.2.12.1.5
(02-24-2025)
Links

- (1) *Notice 2008-39*, superseded Notice 2002-44.
- (2) Form 8484, Report of Suspected Practitioner Misconduct and Report of Appraiser Penalty for the Office of Professional Responsibility (OPR).

- 4.30.2.12.2
(02-24-2025)
Computing and Substantiating the Credit for Increasing Research Activities under IRC 41 for Activities involved in Developing New Pharmaceutical Drugs and Therapeutic Biologics
- (1) LB&I released **Guidance for Computing and Substantiating the Credit for Increasing Research Activities under IRC 41 for Activities Involved in Developing New Pharmaceutical Drugs and Therapeutic Biologics**, dated December 7, 2012 (Control No: LB&I-04-1212-014). The Director, Enterprise Activities Practice Area is responsible for the policies and procedures in this IRM subsection.
 - (2) This guidance provides LB&I examiners with information to use in determining whether a taxpayer in the pharmaceutical and biotechnology industries has appropriately computed the credit for increasing research activities under IRC 41 for activities involved in developing new pharmaceutical drugs and therapeutic biologics.
- 4.30.2.12.2.1
(02-24-2025)
Background
- (1) IRC 41 provides a credit for increasing research activities. A taxpayer's research credit is based, in part, on qualified research expenses (QREs) paid or incurred by a taxpayer during the taxable year in carrying on any trade or business of the taxpayer.
 - (2) When this guidance was originally issued, the development of pharmaceutical drugs and therapeutic biologics was broken down into four stages. With the passage of time, this has evolved into five stages (where discovery and pre-clinical research are separated into separate stages). See section A.3, Overview of Drug Development Process of Pub 5931, Pharmaceutical Industry Research Credit Audit Technique Guide, for detailed information on the five stages of the pharmaceutical product development process.
- 4.30.2.12.2.2
(02-24-2025)
Examination Guidance
- (1) Examiners should not challenge the amount of QREs taken by a taxpayer:
 - a. to the extent that the QREs, within the meaning of IRC 41(b), are for "qualified research" activities (as defined in IRC 41(d)(1) and not excluded by IRC 41(d)(4)) that occur during stages 1 and 2 of the pharmaceutical drug and Therapeutic Biologics Development Process and clinical trials required by the FDA relating to accelerated approvals; and
 - b. the taxpayer provides the certification statement. See IRM 4.30.2.12.2.2.1, for additional information.
- 4.30.2.12.2.2.1
(02-24-2025)
Certification Statement
- (1) See Exhibit 4.30.2-14, Pharmaceutical Drugs and Therapeutic Biologics Development Process Certification Statement, for an example of the certification statement.
 - (2) The taxpayer should provide the signed certification statement to the examiner within thirty days of the date that an information document request (IDR) is issued to the taxpayer with respect to the amount of QREs taken by the taxpayer.
 - (3) A separate certification statement must be submitted for each taxable year under audit. For a consolidated federal income tax return, the common parent is the sole agent for the group and it will sign the certification statement for each member of the group. An examiner will consider any taxpayer not in compliance with these requirements ineligible for this guidance and subject to regular audit procedures.
 - (4) For this guidance to apply, a taxpayer must complete all sections of the certification statement. The certification statement must be signed by an individual

who is authorized to execute the taxpayer's federal income tax return for the taxable year under audit, and must certify, under penalty of perjury that, for the taxable year under audit, the taxpayer's computation of QREs is consistent with IRC 41. Pursuant to IRC 6001, the taxpayer should retain the underlying documentation that would permit the examiner to make a determination that the taxpayer's computation of QREs meets the requirements of IRC 41. Prior to requesting the underlying documentation, the examiner must receive approval from the territory manager. If a taxpayer fails to properly and timely submit the requested documentation, then the director or field operations or their delegate may determine that this guidance does not apply to the taxpayer.

4.30.2.12.3
(02-24-2025)
**Expensing R&D Costs
on Financial Statements
Pursuant to ASC 730**

- (1) LB&I released **Guidance for Allowance of the Credit for Increasing Research Activities under IRC 41 for Taxpayers that Expense Research and Development Costs on their Financial Statements pursuant to ASC 730**, dated September 11, 2017 (Control No: LB&I-04-0917-005). The Director, Enterprise Activities Practice Area is responsible for the policies and procedures in this IRM subsection.
- (2) This guidance provides Large Business & International ("LB&I") examiners with guidance regarding examination of the credit for increasing research activities under IRC 41 ("Research Credit") claimed by LB&I taxpayers. Independently determining the correct amount of research credits claimed by LB&I taxpayers imposes a significant burden on those taxpayers and LB&I examiners. This guidance is intended to provide an efficient manner of determining qualified research expenses ("QREs") for LB&I taxpayers that meet the requirements of this guidance and to more efficiently manage LB&I's audit resources.
- (3) Pending any future guidance modifying or superseding this guidance, this guidance provides an administrative solution to accept as sufficient evidence of QREs the Adjusted ASC 730 Financial Statement R&D for the credit year. Adjusted ASC 730 Financial Statement R&D is made up of the research and development costs currently expensed on a taxpayer's certified audited financial statements pursuant to ASC 730 for U.S. GAAP purposes ("ASC 730 financial statement R&D") and includes certain specified adjustments made to ASC 730 financial statement R&D.
- (4) This guidance only applies to LB&I taxpayers (i.e. assets equal to or greater than \$10,000,000) who follow U.S. GAAP to prepare their certified audited financial statements which show as a separate line item on the income statement included in their certified audited financial statements or show separately stated in a note to their certified audited financial statements the amount of the currently expensed ASC 730 financial statement R&D.

4.30.2.12.3.1
(02-24-2025)
**Background and Issue
Tracking**

- (1) IRC 41 provides a credit for increasing research activities. A taxpayer's research credit is based, in part, on QREs paid or incurred by a taxpayer during the taxable year in carrying on any trade or business of the taxpayer.
- (2) For each taxable year the taxpayer follows this guidance, use the project, tracking and UIL codes below:
 - Project code 6750 - LB&I Research and Experimentation Credit IIR
 - Tracking code 1511 - LB&I Directive - Credit for Increasing Research Activities under IRC 41

- Uniform Issue List (UIL) code 0041.03-00 in the Issue Management System (IMS)

4.30.2.12.3.2
(02-24-2025)
Examination Guidance

- (1) If the taxpayer complies with the certification requirements in IRM 4.30.2.12.3.3, Certification Statement, of this guidance, LB&I examiners will not challenge QREs which are the Adjusted ASC 730 Financial Statement R&D costs for the credit year. Adjusted ASC 730 Financial Statement R&D must be computed in accordance with both the method reflected in Exhibit 4.30.2-17, Appendix C and the definitions provided in Exhibit 4.30.2-20, Appendix E of this guidance.
- (2) Any additional amounts of QREs claimed by taxpayer on its Form 6765 for the credit year over the Adjusted ASC 730 Financial Statement R&D amount are subject to risk assessment to determine the scope of an examination, if warranted.
- (3) This guidance is only applicable for tax years ending prior to July 31, 2020 for LB&I taxpayers who have chosen to follow the terms of the guidance.

4.30.2.12.3.3
(02-24-2025)
Certification Statement

- (1) Taxpayers may have voluntarily attached the completed and signed certification statement claiming Adjusted ASC 730 Financial Statement R&D as QREs ("Exhibit 4.30.2-15, appendix A, certification statement") and Exhibit 4.30.2-16, Exhibit 4.30.2-17, Exhibit 4.30.2-19 (appendices B, C, & D) to their federal income tax return to demonstrate their eligibility under the provisions of this guidance. If these documents were not voluntarily attached to the return, the audit team at the beginning of the examination of the research credit will verify whether the taxpayer followed or plans to follow the guidance. For taxpayers choosing to follow the guidance, the exam team will then request taxpayer to provide the completed disclosure statements below:
 - Exhibit 4.30.2-15 Appendix A - Certification Statement Claiming Adjusted ASC 730 Financial Statement R&D as QREs
 - Exhibit 4.30.2-16 Appendix B – Reconciliation of Form 6765 QREs to Adjusted ASC 730 Financial Statement R&D. (Reconciliation should include a breakdown of costs as detailed in Appendix B)
 - Exhibit 4.30.2-17 Appendix C – Computation of Adjusted ASC 730 Financial Statement R&D
 - Exhibit 4.30.2-19 Appendix D - Adjusted ASC 730 Financial Statement R&D Wage Detail
 - Exhibit 4.30.2-20 Appendix E - Definitions
- (2) The certification statement must be signed by an individual who is authorized to execute the taxpayer's federal income tax return for each taxable year under audit, and must certify, under penalty of perjury that, for the applicable taxable year, the Adjusted ASC 730 Financial Statement R&D has been computed in accordance with the definitions and methodology set forth in this guidance and that all information provided by taxpayer in accordance with this guidance, to the best of the authorized individual's knowledge and belief, is true, correct, and complete. For a consolidated federal income tax return, the common parent is the sole agent for the group and will sign the certification statement on behalf of the consolidated group.
- (3) In addition, taxpayer must retain and make available upon request the underlying books and records (documentation) that support the amounts claimed on appendices C and D, inclusive. If taxpayer fails to properly retain and timely

submit the requested documentation, then the applicable director of field operations or his/her delegate may determine that this guidance does not apply to taxpayer.

- (4) Documentation to be retained and to be made available upon request relating to appendices C taxpayer and D would include, but is not limited to:
 - a. Certified audited financial statement for the credit year including auditor's certifying opinion
 - b. Taxpayer's chart of accounts
 - c. List of U.S. ASC 730 financial statement cost centers that make up the ASC 730 financial statement R&D amount shown in step 1 of appendix C
 - d. All ASC 730 R&D GL accounts with account balance details that make up the ASC 730 financial statement R&D amount shown in step 1 of appendix C
 - e. List of ASC 730 R&D GL accounts with account balances that make up the adjustments in steps 2 through 4 of appendix C
 - f. Taxpayer's organization chart showing employees and levels of management for the credit year
 - g. Executed contracts pursuant to which taxpayer is performing ASC 730 research in order to comply with the terms of the contract
 - h. Executed contracts pursuant to which persons other than employees of taxpayer are performing ASC 730 research on behalf of taxpayer. This would include sufficient information to show what research was performed outside the U.S.
 - i. List of employees with their respective W-2 wage amounts claimed as additions to U.S. ASC 730 financial statement R&D in step 4 of appendix C, which list would also identify for the applicable taxable year each employee's job title and reporting level and the cost center where each of those employees worked

4.30.2.12.3.4
(02-24-2025)
Contacts

- (1) Questions concerning this guidance should be directed to the General Business Credits Practice Network. Also see the *ASC 730 guidance section* on the virtual library.
- (2) *Frequently Asked Questions* for this guidance are available on irs.gov.

4.30.2.12.4
(02-24-2025)
Updated Guidance on Expensing R&D Costs on Financial Statements Pursuant to ASC 730

- (1) LB&I released **Guidance for Allowance of the Credit for Increasing Research Activities under IRC 41 for Taxpayers that Expense Research and Development Costs on their Financial Statements pursuant to ASC 730**, dated September 10, 2020 (Control No: LB&I-04-0820-0016). This guidance revises and clarifies LB&I-04-0917-005, dated September 11, 2017 as shown in IRM 4.30.2.12.3. The Director, Enterprise Activities Practice Area is responsible for the policies and procedures in this IRM subsection.
- (2) This guidance provides Large Business & International (LB&I) examiners with guidance regarding examination of the credit for increasing research activities under IRC 41 (Research Credit). IRS's independent determinations of the correct amount of research credit imposes a significant burden on LB&I taxpayers and examiners. This guidance is intended to provide an efficient methodology for determining qualified research expenses (QREs) for LB&I taxpayers that meet the requirements of this guidance and to more efficiently manage LB&I's audit resources.

- (3) If the IRS determines that a taxpayer has satisfied all the requirements of this revised guidance, then this guidance provides an administrative solution for LB&I examiners to accept, as sufficient evidence of QREs, the Adjusted ASC 730 Financial Statement R&D for the credit year. Adjusted ASC 730 Financial Statement R&D is made up of the research and development costs currently expensed on a taxpayer's certified audited financial statements pursuant to ASC 730 for U.S. GAAP purposes (U.S. ASC 730 financial statement R&D) and includes certain specified adjustments made to financial statement R&D.
- (4) This guidance only applies to LB&I taxpayers (i.e. assets equal to or greater than \$10,000,000) who follow U.S. GAAP to prepare their certified audited financial statements showing the amount of currently expensed financial statement R&D either as:
 - a. a separate line item on the income statement included in their certified audited financial statements, or
 - b. separately stated in a note to their certified audited financial statements.

Note: This guidance does not apply to any taxpayer unless the taxpayer uses these same U.S. GAAP financial statements to reconcile book income to federal tax income on Schedule M-3.

4.30.2.12.4.1
(02-24-2025)
**Background and Issue
Tracking**

- (1) IRC 41 provides a credit for increasing research activities. A taxpayer's research credit is based, in part, on QREs paid or incurred by a taxpayer during the taxable year in carrying on any trade or business of the taxpayer.
- (2) LB&I examiners should use the project, tracking and UIL codes below for each taxable year a taxpayer follows this guidance:
 - Project code 6750 – LB&I Research and Experimentation Credit IIR
 - Tracking code 1511 – LB&I Directive – Credit for Increasing Research Activities under IRC 41
 - Uniform Issue List (UIL) code 0041.03-00 in the Issue Management System (IMS)

4.30.2.12.4.2
(02-24-2025)
Examination Guidance

- (1) Taxpayers may have voluntarily attached the completed and signed Exhibit 4.30.2-15, **Certification Statement Claiming Adjusted ASC 730 Financial Statement R&D as QREs (“Certification Statement”)** (appendix A) and Exhibit 4.30.2-16, Exhibit 4.30.2-18, Exhibit 4.30.2-19 (appendices B, C, & D below) to their federal income tax return to demonstrate their eligibility under the provisions of this guidance. If these documents were not voluntarily attached to the return, the audit team at the beginning of the examination of the research credit will verify whether the taxpayer followed the guidance. For taxpayers who followed the guidance and did not voluntarily attach the documents to their return, the exam team will request the taxpayer provide the completed appendices (appendices A – D) below:
 - Exhibit 4.30.2-15 Appendix A - Certification Statement Claiming Adjusted ASC 730 Financial Statement R&D as QREs
 - Exhibit 4.30.2-16 Appendix B - Reconciliation of Form 6765 QREs to Adjusted ASC 730 Financial Statement R&D
 - Exhibit 4.30.2-18 Appendix C - Computation of Adjusted ASC 730 Financial Statement R&D

- Exhibit 4.30.2-19 Appendix D - Adjusted ASC 730 Financial Statement R&D Wage Detail
- Exhibit 4.30.2-21 Appendix E - Definitions

- (2) Taxpayer must properly retain and timely submit (within a time period subject to LB&I IDR enforcement process) the documentation listed in IRM 4.30.2.12.4.5, Documentation, of this guidance. This documentation must support, to the satisfaction of the exam team, that the amounts reported on appendices C & D are true, correct and complete.
- (3) If the exam team determines the requirements of this guidance have not been satisfied, the exam team may request information in addition to the documentation requested in IRM 4.30.2.12.4.5, Documentation, of this guidance. The exam team must receive approval from the territory manager or his/her delegate to request additional information not listed in IRM 4.30.2.12.4.5, Documentation, of this guidance.
- (4) If a taxpayer fails to provide the underlying books and records (as noted in IRM 4.30.2.12.4.5, Documentation) or to substantiate its U.S. ASC 730 financial statement R&D amount per Line 4 of Appendix C to the satisfaction of the exam team, the territory manager or his/her delegate may determine this guidance does not apply to the taxpayer.
- (5) Any additional amounts of QREs claimed by the taxpayer, on its Form 6765 "Credit for Increasing Research Activities" for the credit year, that exceeds the Adjusted ASC 730 Financial Statement R&D amount are subject to risk assessment to determine the scope of an examination, if warranted.

4.30.2.12.4.3
(02-24-2025)
Implementation

- (1) The guidance issued on September 11, 2017 (shown in IRM 4.30.2.12.3) continues to apply to LB&I taxpayers who chose to calculate their QREs using the requirements of that guidance on original returns timely filed (including extensions) on or after September 11, 2017 for tax periods ending prior to July 31, 2020.
- (2) This revised guidance applies to LB&I taxpayers who choose to calculate their QREs using the requirements of this guidance on original returns timely filed (including extensions) for tax periods ending on or after July 31, 2020.

4.30.2.12.4.4
(02-24-2025)
Certification Statement

- (1) The certification statement (as shown in Exhibit 4.30.2-15) must be signed by an individual who is authorized to execute the taxpayer's federal income tax return for each taxable year under audit, and must certify, under penalty of perjury that, for the applicable taxable year, the Adjusted ASC 730 Financial Statement R&D has been computed in accordance with the definitions and methodology set forth in this guidance and that all information provided by the taxpayer in accordance with this guidance, to the best of the authorized individual's knowledge and belief, is true, correct and complete. For a consolidated federal income tax return, the common parent is the sole agent for the group and will sign the certification statement on behalf of the consolidated group.

4.30.2.12.4.5
(02-24-2025)
Documentation

- (1) Documentation to be retained and to be made available upon request relating to appendices C and D would include, but is not limited to:

- a. Certified audited financial statement for the credit year including auditor's certifying opinion
- b. Taxpayer's chart of accounts
- c. List of financial statement cost centers that make up the financial statement R&D amount shown in step 1 of appendix C
- d. All R&D GL accounts with account balance details that make up the financial statement R&D amount shown in step 1 of appendix C
- e. List of R&D GL Accounts with account balances that make up the adjustments in Step 2 of appendix C
- f. List of U.S. ASC 730 R&D GL Accounts with account balances that make up the adjustments in Steps 3 and 4 of appendix C
- g. Taxpayer's supporting documentation showing all employees and levels of management included in the total QREs for the credit year
- h. Executed contracts pursuant to which the taxpayer is performing ASC 730 research in order to comply with the terms of the contract
- i. Executed contracts pursuant to which persons other than employees of the taxpayer are performing ASC 730 research on behalf of the taxpayer. This would include sufficient information to show what research was performed outside the U.S.
- j. List of employees with their respective W-2 Wage amounts claimed as additions to U.S. ASC 730 financial statement R&D in Step 4 of appendix C, which list would also identify for the applicable taxable year each employee's job title and reporting level and the cost center where each of those employees worked.
- k. A written narrative of the methodology and calculations for determining the amounts listed on Appendix C Lines 3a and 3b of this guidance. If no amounts are listed on appendix C Lines 3a and/or 3b of this guidance, the taxpayer must provide an explanation of the methodology utilized to verify none of these expenses are present in the U.S. financial statement R&D amount. The explanation should include sufficient information to show that the taxpayer made a reasonable effort to quantify non-ASC 730 financial statement R&D
- l. Substantiation of internal control over financial reporting (ICFR) designed to mitigate material misstatement of the taxpayer's expenses reported per financial statements. Substantiation may be provided by a presentation or in writing.

4.30.2.12.4.6
(02-24-2025)
Additional Resources

- (1) Questions concerning this guidance should be directed to the General Business Credits Practice Network. Also see the *ASC 730 guidance section* on the virtual library.
- (2) *Frequently Asked Questions* and LB&I concept and process practice units for this guidance are available on irs.gov.

4.30.2.13
(02-24-2025)
Timber Casualty Losses

- (1) LB&I released **Field Directive on Timber Casualty Losses**, dated April 16, 2004 (no control number). The Directors of Enterprise Activities Practice Area and Eastern Compliance Practice Area are responsible for the policies and procedures in this IRM subsection.
- (2) This guidance is intended to provide direction to effectively utilize resources in the classification and examination of a forestry industry taxpayer.

4.30.2.13.1
(02-24-2025)
Background

- (1) When the original directive was issued, the compliance risk associated with the valuation of timber casualty losses was significant. This risk was estimated at \$2.5 billion to \$5 billion for open return years, and represented the number one issue in the forest products industry. A timber casualty loss issue guidance team was formed to identify avenues through which this compliance risk may be reduced, including the development of pre-filing guidelines as well as post-filing audit and issue resolution tools.
- (2) The current issue involves the proper approach to valuation of the single identifiable property (SIP) damaged or destroyed by the casualty event. Taxpayers generally identify the SIP as the entire depletion block (as allowed by Rev. Rul. 99-56) to maximize the basis limitation. However, they often fail to comply with regulations and case law requiring the valuation of the SIP, both before and after the casualty event, in order to determine the diminution in fair market value of the SIP as a whole. Instead, many taxpayers utilize an additive approach, whereby they determine the volume of timber damaged or destroyed and multiply that quantity by current unit rates. By using the additive approach, taxpayers frequently place a value on the loss that is much greater than the diminution in value of the entire block on a before and after basis.
- (3) IRS examiners face significant obstacles in determining the correctness of reported casualty loss claims. First, since Revenue Ruling 99-56 accepted the depletion block as the SIP, there has been little guidance describing the legal requirements for the valuation of timber casualty losses. In addition, since taxpayers rarely perform an appraisal of the SIP, IRS examiners must determine the accuracy of the short-cut valuation and frequently perform an appraisal of the SIP themselves -- all with limited access to comparable sales data, time constraints, and a lack of clear guidance as to what must be valued.

4.30.2.13.2
(02-24-2025)
Recommendation

- (1) To address this audit issue and improve consistency and quality of timber casualty loss examinations, the timber casualty loss guidance team developed examination guidelines and an issue paper on the valuation of a single identifiable property, see IRM 4.30.2.13.4, Additional Information and Resources, for links to these materials. The purpose of this guidance is to provide a simplified method for assessing whether IRS resource allocation is feasible when determining the issue of timber casualty losses. When reviewing the taxpayer data, if the values claimed by the taxpayer are below the values computed under this simplified method, resources would not need to be expended. When the claimed loss is greater than the amount computed under the simplified method, the examiner should perform the necessary risk analysis to determine if a valuation of the loss is required. The assessment of the valuation of a casualty loss under the guidance consists of three steps.
 1. First, a gross timber loss is calculated. This consists of the total value of the, dereproduction, premerchantable, and merchantable timber that is damaged or destroyed. The respective values are computed as described below using published third-party sources for merchantable timber and capitalization of establishment costs for reproduction.
 2. Next, the allowable loss is determined, by applying a size adjustment, if appropriate, to the gross timber loss.
 3. Finally, the deductible loss is computed, which is the lesser of the allowable loss, or the adjusted timber basis in the depletion block.
- (2) Four factors determine the value of the loss under this guidance:

1. The volume of timber damaged or destroyed.
 2. The published units stumpage rates chosen for the merchantable timber;
 3. The valuation procedures specified for the, reproduction and premerchantable timber.
 4. The size adjustment, if appropriate, for the timber block.
- (3) Factors 2 through 4 affect valuation as follows:
- a. Unit timber values under this guidance method must be determined in a readily verifiable procedure. Average timber values from widely accepted timber price reporting services must be utilized in determining the unit timber values. Examples of acceptable services include Timber Mart South or the Pennsylvania Timber Price Report. Other potential sources include severance tax schedules published by state taxing or forestry authorities. The selection of the reporting service values must be consistent with the time period, the location of the timber casualty, and also the product class of the timber must correspond with the appropriate value claimed (i.e. pulpwood prices must be used for pulpwood).
 - b. The reproduction values, on a per acre basis, must be determined by using the establishment cost of new plantations for the year in which the loss occurred and capitalizing this cost at the corresponding Farm Credit Bank District Rate for each year equal to the age of plantation which is the subject of the loss. This rate is published annually in Revenue Rulings, such as Revenue Ruling 2002-26. The Farm Credit Bank District rates chosen must correspond with the affected block location.
 - c. It is generally accepted in forestry literature as well as in valuation studies that large blocks sell for lower per unit values than smaller blocks. For application of this guidance, therefore, the gross timber value for large blocks must be reduced per the table below.
- (4) The following table shows the gross timber value reduction required for large blocks.

Block Size in Acres	Size Adjustment (Reduction)
< 100,000	None
100,000 - 300,000	15%
300,000 - 500,000	20%
> 500,000	25%

These size reductions must be applied both to the merchantable and the premerchantable timber values, on a block-by-block basis. No re engineering of original depletion block sizes will be permitted allowing the taxpayer to take advantage of the lower size reductions outlined above. Any change in block sizes will require approval as an accounting method change.

4.30.2.13.3
(02-24-2025)
Examples

- (1) The following examples illustrate the applications of this guidance.
- (2) **Example 1:** A fire destroyed 30 acres of taxpayer X's pine plantation. X's total ownership consisted of 2,000 acres with a total basis of \$400,000. The entire property was treated as one depletion block. At the time of the fire, each acre contained 30 cords of pine saw timber. The Timber Mart South price per cord

for the applicable timber is \$90. X's loss is (30 acres x 30 cords/acre x \$90 / cord) \$81,000. No size adjustment is applied since the depletion block is less than 100,000 acres.

- (3) **Example 2:** A hurricane destroyed 13,000 acres of Y's plantation located in South Carolina on September 28, 2003. The destroyed acres consisted of 3,000 acres of 5 year old reproduction (generally < 15 years of age) with a plantation establishment cost in 2003 of \$200 per acre and 10,000 acres of merchantable timber containing an average of 25 cords per acre. The plantation was part of Y's Southeast U.S. depletion block, which contained 250,000 acres with a total timber basis of \$45,000,000. The applicable five-year farm credit rates are as follows: (1998 – 9.32%, 1999 – 9.65%, 2000 – 9.82%, 2001 – 9.90%, and 2002 – 9.68%). The reproduction is valued at \$200 capitalized at the appropriate rate for 5 years which equals \$317.35 per acre. In addition to the reproduction, merchantable pine pulpwood was destroyed. According to Timber Mart South the average pulpwood timber price is valued at \$20 per cord. Y's loss is calculated as follows. The taxpayer lost 250,000 cords of pine pulpwood (follow procedures for volume verification in Exhibit A). The gross timber loss is the 250,000 cords x \$20/cord + 3,000 acres of reproduction x \$317.35/ acre or \$5,952,050. Because the destroyed timber was in a block that is greater than 100,000 but less than 300,000 acres the gross timber loss must be reduced by fifteen percent (15%) to determine the allowable loss. The calculated loss is \$5,952,050 – (\$5,952,050 x 0.15) or \$5,059,242. The adjusted basis of the depletion block, (\$45,000,000) is sufficient to absorb the calculated loss of \$5,059,242, so the entire \$5,059,242 is deductible as a casualty loss.
- (4) **Example 3:** Taxpayer Z owns timber properties throughout the United States. During the taxable year, Z's timber properties suffered two casualties. A wild fire destroyed 4,500 acres of its timber in the Northwest. The average volume per acre for the destroyed property was 6,000 board feet (Mbf). The applicable published state severance tax schedules show a value of \$250/Mbf. A hurricane destroyed 1250 acres of Z's timber in the South. The average cords per acre for the Southern timber was 18 and the applicable price per cord per Timber Mart South was \$22. Z's timber properties are depleted in two blocks, the Northwestern block which contains 1,200,000 acres with a total basis of \$300,000,000 and a Southern block which contains 200,000 acres with a total basis of \$38,000,000. Z's gross timber loss is computed as follows: Northwest = 4,500 acres x 6 Mbf / acre x \$250 / Mbf or \$6,750,000; South 1250 acres x 18 cords / acre x \$22 / cord or \$495,000. Because the destroyed timber is in respective blocks of greater than 500,000 acres and greater than 100,000 acres but less than 300,000 acres, the gross timber loss must be reduced by twenty-five percent and fifteen percent respectively. Z's allowable loss is ((\$6,750,000 – (\$6,750,000 x 0.25) or \$5,062,500) + ((\$495,000 – (\$495,000 x 0.15) or \$420,750) equal to \$5,483,250. The total timber loss is allowable since it does not exceed the timber basis in the respective blocks.
- (5) **Example 4:** Taxpayer Q owns timber property in the Pacific Northwest. The Block contains 400,000 acres with a total block basis of \$60,000,000. During the 2000 tax year, Q's property suffered a casualty when a wildfire destroyed 5,000 acres of its 20 year old reproduction. The site class (50 year) was 125. The rotation age is 40 years. Based on Washington State Department of Natural Resources Report 41, Empirical Growth & Yield Tables for the Douglas Fir Zone, the harvest volume at age 40 will be 18.2 Mbf per acre. Based on Washington Department of Revenue Timber Excise Tax tables the stumpage value for 2000 is \$300 per Mbf. The applicable farm credit rate for 2000 is

9.82%. Q's gross timber loss is calculated as follows: 18.2 Mbf/acre x \$300/Mbf discounted at the appropriate rate (9.82%) for 20 years equals \$839 per acre. Therefore, the gross loss is \$4,193,087. Because the destroyed timber is in a block greater than 300,000 acres and less than 500,001 acres, a size adjustment of 20% is applied ($\$4,193,087 - (\$4,193,087 \times .20) = \$3,354,469$). The total loss is allowable since it does not exceed the timber basis in the block.

4.30.2.13.4
(02-24-2025)
**Additional Information
and Resources**

- (1) Additional information can be found on the Industry Knowledge Base under Natural Resources, *Forest Products*. You can contact a LB&I forest products subject matter expert using the link under other related resources on this page.
- (2) Additional resources include:
 - Timber Casualty Loss Audit Technique Guide (publication pending at the time this IRM was published)
 - *Issue Paper on the Valuation of a Single Identifiable Property*

4.30.2.14
(02-24-2025)
**Wireless
Telecommunication
Assets**

- (1) LB&I released **Large Business and International Directive Wireless Telecommunication Assets**, dated January 23, 2012 (Control No. LB&I-04-1111-020). The Directors of Enterprise Activities Practice Area and Western Compliance Practice Area are responsible for the policies and procedures in this IRM subsection.
- (2) This guidance provides direction to the field in the examination of depreciation deductions associated with certain tangible assets placed in service by wireless telecommunications carriers. This directive is intended to provide a uniform format and approach for examiners to evaluate potential compliance risk related to this issue.

4.30.2.14.1
(02-24-2025)
Background

- (1) In general, IRC 167(a) provides that there is 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 IRC 167(a) for tangible property placed in service after 1986 generally is determined under IRC 168, which prescribes two methods of accounting for determining depreciation allowances:
 - a. The general depreciation system in IRC 168(a); and
 - b. The alternative depreciation system in IRC 168(g)
- (2) Rev. Proc. 87-56, 1987-2 C.B 674 as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B 785, provides the class lives of property for computing the depreciation allowance under IRC 168. This revenue procedure establishes two broad categories of depreciable assets:
 - a. Asset classes 00.11 through 00.4, which consist of specific assets used in all business activities (asset categories); and
 - b. Asset classes 01.1 through 80.0, which consist of assets used in specific business activities (activity categories)

Note: The same item of depreciable property may be classified in both an asset category and an activity category, in which case the item generally is classified in the asset category.

- (3) A wireless telecommunication carrier has numerous tangible assets which are used primarily to provide wireless telecommunication services. These wireless telecommunication assets are classified for depreciation purposes using various depreciation methods, recovery periods, and/or conventions.
- (4) To resolve this issue in a manner that conserves resources of both the IRS and taxpayers, the IRS issued Rev. Proc. 2011-22 which provides a safe harbor method of accounting for the depreciation of certain tangible assets used by wireless telecommunications carriers. Rev. Proc. 2011-22 is effective prospectively, for taxable years ending on or after December 31, 2010.
- (5) Use of the safe harbor approaches included in Rev. Proc. 2011-22 is only permitted under the terms and conditions contained therein, and should not be considered for purposes of resolving class life issues in prior open exam years.

4.30.2.14.2
(02-24-2025)
**Planning and
Examination Guidance**

- (1) The original guidance included planning and examination guidance for tax years ending before December 31, 2010. Due to the passage of time, guidance for these tax years is no longer applicable.
- (2) For tax years ending on or after December 31, 2010, when examining returns of telecommunication carriers, examiners should determine if an election was made in accordance with section 5 of Rev. Proc. 2011-22 to adopt the safe harbor recovery periods for any assets listed in Section 3 of the revenue procedure. Since the taxpayer may adopt the safe harbor recovery periods for all eligible assets, or one or more of the assets, the examining agent should determine if the taxpayer made the change in method of accounting for all eligible assets. If so, the examiner should accept the depreciation deduction as filed.
- (3) If the taxpayer did not adopt the safe harbor recovery periods for all eligible assets or one or more of the eligible assets, and the two-year period to adopt the safe harbor recovery periods has expired, then the agent should perform a risk assessment to determine the materiality of the depreciation deduction claimed with respect to wireless telecommunication tangible assets. If the results of the risk assessment are deemed to be material, the examiner should examine the deduction utilizing the following guidelines:
 - a. In no event should the examiner accept a depreciation deduction based upon an asset description for which the recovery period is shorter than the recovery period found in the Safe Harbor. In this instance, the examiner should adjust the corresponding depreciation deduction to the allowable Safe Harbor recovery period and make the appropriate IRC 481(a) adjustment.
 - b. If the wireless telecommunication carrier claims a depreciation deduction based upon an asset description for which the recovery period is equal to the recovery period found in Safe Harbor, then the examiner should accept the depreciation deduction for that asset. However, the examiner should ascertain whether the taxpayer properly adopted the recovery period being used and request documentation to verify that the appropriate IRC 481(a) adjustment was taken into account in the year of adoption. If it was not, the examiner should make the appropriate IRC 481(a) adjustment.
 - c. If the wireless telecommunication carrier claims a depreciation deduction based upon an asset description for which the recovery period is longer

than the recovery period found in the safe harbor, then the examiner should not further pursue the depreciation classification for that asset.

- d. If the wireless telecommunication carrier claims a depreciation deduction which combines asset descriptions into one asset group, then the examiner should request that the taxpayer break down the asset group and depreciation deduction into asset descriptions that correspond to the asset descriptions in the Safe Harbor. The examiner should then perform a risk assessment and determine if further examination is warranted, applying the above guidance.

4.30.2.14.3
(02-24-2025)
True-up Requirement

- (1) When performing the risk assessment, the examiner should also consider if the IRC 481(a) adjustment was computed accurately. If prior to the issuance of Rev. Proc. 2011-22 the taxpayer had filed a Form 3115, Change in Accounting Method, to change the treatment of depreciation expense associated with certain tangible assets placed in service by wireless telecommunications carriers, then the IRC 481(a) adjustment resulting from a change to the Rev. Proc. 2011-22 safe harbor method ("new IRC 481(a) adjustment") should be computed. The examiner should also ensure that the new IRC 481(a) adjustment properly accounts for depreciation expense that was computed under the taxpayer's prior method, in the interim years between the old and new IRC 481(a) adjustments.
- (2) Examiners should be aware of the automatic method change described in section 6.09 of Rev. Proc. 2024-23, 2024-23 I.R.B. 1334, for a taxpayer that is within the scope of Rev. Proc. 2011-22 and wants to change to the recovery periods described in section 5 of Rev. Proc. 2011-22 and any collateral change to the depreciation methods for all, or some of, the assets listed in that section.

4.30.2.14.4
(02-24-2025)
Contacts

- (1) If you have any questions please contact the LB&I Deductible and Capital Expenditures and Methods of Accounting and Timing Practice Networks.

4.30.2.15
(02-24-2025)
Work Opportunity Tax Credit

- (1) LB&I and SB/SE released **Joint Directive on the Work Opportunity Tax Credit per IRC 51**, dated October 10, 2019 (Control No. LBI-04-1019-011). The Director, Enterprise Activities Practice Area is responsible for the policies and procedures in this IRM subsection.
- (2) This joint guidance provides instructions to LB&I and SB/SE examiners on the treatment of Work Opportunity Tax Credit (WOTC) examinations under IRC 51. Specifically, this joint guidance is effective for all LB&I and SB/SE taxpayers claiming the WOTC in the year their eligible employees are certified.

4.30.2.15.1
(02-24-2025)
Background

- (1) In general, IRC 51 provides a WOTC for employers who hire and pay qualified wages, as defined in IRC 51(b) and (e), to individuals who are certified members of targeted groups, in accordance with IRC 51(d)(13). However, third-party payers, such as professional employer organizations, are not considered employers eligible to claim the WOTC.
- (2) An employer may claim the WOTC upon receipt of a certification that an individual employee is a member of a targeted group. An employer must submit IRS Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit, to the Designated Local Agency (DLA) as defined in IRC 51(d)(12), also referred to as the State Workforce Agency (SWA), to certify the

employee. The Form 8850 is required to be submitted no later than the 28th calendar day after the employee begins to work for the employer.

- (3) After receipt of the certification from the DLA or SWA, employers compute and claim the WOTC in the year in which they paid or incurred certified employees' qualified wages. Extended delays associated with the WOTC certification process prevent some employers from being able to claim the WOTC on the tax return originally filed for the year in which the qualified wages were paid or incurred. This creates a need for employers to file multiple amended federal and state income tax returns, each year, to claim the WOTC in the year the employer paid or incurred the qualified wages. In lieu of filing amended returns, some employers have claimed the WOTC in the year they receive the delayed certifications for the qualified wages they paid or incurred in earlier year(s).

4.30.2.15.2
(02-24-2025)
**Planning and
Examination Guidance**

- (1) To use resources effectively and to reduce administrative burden, examiners shall not challenge the timing of when a taxpayer claims the WOTC, if the claimed WOTC complies with all requirements of IRC 51, but the WOTC is claimed in the year the taxpayer receives the delayed certification (certification year). To comply with IRC 280C, taxpayers claiming the WOTC under this guidance must not claim or have claimed a deduction for wages, equal to the WOTC.
- (2) If an examiner audits the WOTC, the examiner should first determine the taxpayer's WOTC computation methodology. If the taxpayer consistently claims the WOTC in the certification year, then the examiner should follow this guidance and allow the taxpayer to claim the WOTC in the certification year. The taxpayer should be allowed an initial transition year to convert from its previous computation methodology to claiming the WOTC in the certification year.
- (3) The examiner may verify a taxpayer's WOTC computation by confirming the amount and year qualified wages were paid, the year certifications were received, and that the taxpayer did not include the same qualified wages to compute other credits (e.g., Empowerment Zone (IRC 1396(c)(3)), Indian Employment (IRC 45A(b)(1)(B)), Research Credit (IRC 41(b)(2)(D)(iii)), etc.). Under IRC 6001, the taxpayer should make available to the examiner, upon request, all relevant documentation to substantiate the WOTC.

4.30.2.15.3
(02-24-2025)
Contact

- (1) Direct questions concerning this guidance to the General Business Credits Practice Network.

Exhibit 4.30.2-1 (02-24-2025)**Guidelines on Auditing Bank Bad Debt Conformity Election**

In general, a deduction is allowed under IRC 166 for any debt which becomes worthless within the taxable year. However, no precise test exists for determining whether a debt is worthless. In many situations, no single factor or identifiable event clearly demonstrates whether a debt has become worthless. Instead, a series of factors or events in the aggregate establishes whether the debt is worthless.

For tax years ending on or after December 31, 1991, a bank, within the meaning of IRC 581 (see 26 CFR 1.166-2(d)(4)(i)), may obtain a conclusive presumption of worthlessness for bad debts that it owns by making a conformity election under 26 CFR 1.166-2(d)(3). Under this election, a debt charged off for regulatory purposes is conclusively presumed to be worthless, in whole or in part, if either

- a. the charge-off results from a specific order from a regulatory authority, or
- b. the charge-off corresponds to the bank's classification of the debt as a "loss asset."

26 CFR 1.166-2(d)(3)(ii)(C) defines the term "loss asset" as a debt that the bank has assigned to a class that corresponds to a loss asset classification under the standards set forth by the "Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks" or similar guidance issued by the bank's supervisory authority.

Rev. Rul. 2001-59, published on December 17, 2001 in I.R.B. 2001-51, provides clarification of the classification of a loan as a "loss asset" in order to meet the bad debt conformity election. Following an analysis of the applicable legal authorities, the Revenue Ruling concludes that a bank's board of directors' resolution authorizing charge-offs of only "loss asset" loans is sufficient to demonstrate classification of the loans as loss assets for purposes of 26 CFR 1.166-2(d)(3). The Revenue Ruling also provides examples of the other procedures a bank can use to classify loans (or loan portions) as loss assets.

Furthermore, Rev. Rul. 2001-59 addresses the situation where a bank erroneously charged off loans for regulatory purposes, but the error was not substantial enough for the Commissioner to revoke the bank's conformity election under 26 CFR 1.166-2(d)(3)(iv)(D). In such a situation, the revenue ruling concludes that even the erroneously charged off loans are entitled to the conclusive presumption of worthlessness and an adjustment is not warranted.

I. GUIDELINES FOR AUDITING CONFORMITY ELECTION REQUIREMENT

When auditing a bank under the conformity method of accounting, the examiner must confirm that four requirements have been met for the conclusive presumption of worthlessness to apply to loans owned by the bank. Those four requirements are:

- a. A valid conformity election.
- b. A valid express determination letter.
- c. The loan must be charged off for book purposes.
- d. The loan must be classified as a loss asset (unless charge-off was ordered by the bank's regulator).

If a bank fails to meet either the conformity election or the express determination letter requirements, the bank will not be entitled to utilize the conformity method.

The two remaining requirements of book charge-off and loss asset classification apply to each loan separately. A bank's failure to meet either of these two remaining requirements for a specific loan will not result in an adjustment, unless this failure or a pattern of failures is substantial enough to result in a determination to revoke the bank's conformity election under 26 CFR 1.166-2(d)(3)(iv)(D).

Example: In the situation where a bank erroneously charged off loans for regulatory purposes, but the error was not substantial enough to revoke the conformity election, Rev. Rul. 2001-59 concludes even the erroneously charged off loans are entitled to the conclusive presumption of worthlessness and an

Exhibit 4.30.2-1 (Cont. 1) (02-24-2025)**Guidelines on Auditing Bank Bad Debt Conformity Election**

adjustment is not warranted. However, if a bank had a computer input error that inadvertently resulted in the addition of an extra 0 (e.g. \$5,000,000 vs. \$500,000), this would be considered the correction of a clerical error and the adjustment should be made. See, for example, IRC 6213(b)(1) and 26 CFR 1.446-1(e)(2)(ii)(b).

To determine whether a bank has met the above four requirements of the conformity election and is entitled to a conclusive presumption of worthlessness for its charge off loans, it is recommended that the examiner initially request the following information:

- Form 3115 electing conformity
- Express Determination Letter(s)
- Reconciliation of book charge-offs to tax deductions
- Bank's policies and procedures on loan classification
- Annual reports
- Bank's Reports of Condition and Income (Call Reports)
- Savings and Loan's Thrift Financial Reports
- Securities and Exchange Commission (SEC) filings, e.g. Forms 10-Q, 10-K, 8-K

A Valid Conformity Election

One of the initial documents an examiner must obtain is the bank's Form 3115, Application for Change in Accounting Method, electing conformity. A Form 3115 must be filed by an existing bank to elect the conformity method of accounting. This election must be made on a bank-by-bank basis and could have been made for years as early as 1991. New banks adopt the conformity method by filing a statement with their initial tax return.

Express Determination Letter

In addition, the examiner must also obtain the bank's Express Determination Letter(s) (EDL) covering the years under audit. Pursuant to 26 CFR 1.166-2(d)(3)(iii)(D), every bank under the conformity method must obtain an EDL from its Federal supervisory authority verifying the bank maintains and applies loan loss classification standards consistent with the supervisory authority's regulatory standards. The necessary language for an EDL can be found in Rev. Proc. 92-84, 1992-2 C.B. 489.

At the end of each regulatory examination by its supervisory authority, the bank must request and receive a new EDL. Retroactive EDLs covering earlier regulatory examination periods are not acceptable. Banks are generally examined by their regulator every 18 months.

If a bank fails to obtain the required EDL, the conformity election is automatically revoked as of the beginning of the tax year that includes the date as of which the supervisory authority conducts its examination.

Book Charge-Off Required

It is also recommended that the examiner obtain from the bank a reconciliation of the bank's charge-offs to its bad debt deductions, since a loan must be charged off on the books and records of the bank for the conclusive presumption of worthlessness to apply. Discussions of books in this context refer to the bank's Regulatory Accounting Principles (RAP) books.

Under the conformity election, the bad debt deduction is limited to the year of the book charge-off. Accordingly, the examiner should compare the book charge-offs and bad debt deductions to see if there are any obvious inconsistencies, which should be reconciled.

For book purposes, a savings & loan (S&L) may establish a specific allowance for loans classified as either substandard, doubtful, or loss. Pursuant to 26 CFR 1.166-2(d)(4)(ii), for banks regulated by the Office of Thrift Supervision (OTS), the term "charge-off" includes the establishment of a specific allowance for loan losses in

Exhibit 4.30.2-1 (Cont. 2) (02-24-2025)**Guidelines on Auditing Bank Bad Debt Conformity Election**

the amount of 100 percent of the portion of a debt classified as a loss. This section was added to clarify that the term "charge-off," as it pertains to S&Ls, includes the establishment of specific allowances for loan losses.

Although the establishment of a specific allowance will satisfy the charge-off requirements of the conformity election, the loans charged to a specific allowance must also meet the standards of a loss asset to qualify for a conclusive presumption of worthlessness. A loan classified as substandard or doubtful and charged to a specific allowance by an S&L will not meet the standards of a loss asset.

Loan Must be Classified as a Loss Asset

A loan must also be classified as a "loss asset" by the bank for the conclusive presumption of worthlessness to apply, unless the loan was charged off pursuant to a regulator's specific order. 26 CFR 1.166-2(d)(3)(ii)(C) defines the term "loss asset" as a debt that the bank has assigned to a class that corresponds to a loss asset classification under the standards set forth by the bank's supervisory authority. Therefore, it is recommended that the examiner obtain the bank's policies and procedures on loan classification.

Rev. Rul. 2001-59 provides various procedures for a bank to classify loans, in whole or in part, as loss assets. This evidence could include the board of directors' resolution referred to in the Revenue Ruling, credit committee reports or notations on loan files.

Example: An officer or employee may record that a loan has been classified as a loss asset on the internal form used by the bank at the time of charge-off. Copies of these internal forms could then be centrally filed by the bank making it easier for the examiner to verify that the classification requirement has been met. Additionally, if under a board of directors' resolution, the officers and employees are authorized to charge off loans only if the loans are "loss asset" loans, then the charge-offs of these loans demonstrates that the loans have been classified as loss assets.

Bank's Reports and Filings

Finally, it is recommended that the examiner obtain the bank's annual reports, call reports to its regulator and SEC filings. The examiner should analyze these filings to determine whether the bank's charge-offs and recovery rates warrant further review. For SEC registrants, the quarterly and annual Management Discussion and Analysis (MD&A) reports should provide information about the bank's loan loss methodologies, policies, and procedures.

Note: See the Securities and Exchange Commission Staff Accounting Bulletin: No. 102 - Selected Loan Loss Allowance Methodology and Documentation Issues (July 6, 2001) and the Board of Governors on the Federal Reserve System, Division of Banking Supervision and Regulation: SR 01-17 (SUP) - Final Inter-agency Policy Statement on Allowance for Loan and Lease Losses (ALLL) Methodologies and Documentation for Banks and Savings Institutions.

The examiner should use professional judgement to determine whether the bank's charge-off and recovery rates warrant further review. Some of the factors to be considered include the rate of charge-offs and recoveries in prior years and the change to charge-offs in comparison to prior year(s). The regulatory and SEC filings may help to determine the bank's historical recovery rates for applicable loan categories.

If the bank has met the conformity election requirements and its charge-off and recovery rates appear reasonable, no further audit steps are warranted.

However, if the bank's charge-off and recovery rates do not initially appear reasonable, the examiner should then consider the charge-off and recovery rates experienced by the bank in relation to its peers. Peer groups are often determined with reference to the bank's asset size, lines of business and/or geographic location. Federal studies (such as the Federal Reserve Bank of New York's publication "Current Issues in Economics and Finance") that track current industry charge-off averages may be useful in this analysis.

Exhibit 4.30.2-1 (Cont. 3) (02-24-2025)**Guidelines on Auditing Bank Bad Debt Conformity Election**

Example: If the current industry charge-off average is six percent of outstanding loans for a particular loan category and the taxpayer is charging off 12 percent, a material deviation may exist. The bank should be given the opportunity to explain what economic or other circumstances caused the difference.

A bank's experience with recoveries, as compared to its peers, may also reflect a charge-off in excess of reasonable business judgement. For example, if a bank were recovering 25 percent or more of the charged-off loans for a particular loan category, while peer data would indicate that 12 percent recover rate was more common, a material deviation may exist. The examiner should then question the bank as to why its recovery rate appears to be out of line with the industry.

If the bank is unable to adequately explain the above deviations, it may be appropriate to sample the loan files to see if the data supports the bank's charge-offs. A bank's failure to meet the loan loss classification or charge-off requirements for a specific loan, generally will not result in an individual loan adjustment. If the pattern of failures is substantial enough, however, it may result in a determination to revoke the bank's conformity election.

If the review of the loan files leads to the determination that the charge-offs were substantially in excess of reasonable business judgement, revocation of the election may be warranted. It should be noted that revocation of the conformity election is an extraordinary step when the procedural requirements have been met.

II. REVOCATION OF CONFORMITY ELECTION

As stated previously, if a bank fails to meet either the conformity election or the Express Determination Letter requirements, the bank will not be entitled to utilize the conformity method. However, a bank's failure to meet either the book charge-off and loss asset classification requirements for a specific loan will not result in an adjustment, unless this failure or a pattern of failures is substantial enough to result in a determination to revoke the bank's conformity election under 26 CFR 1.166-2(d)(3)(iv)(D).

Pursuant to 26 CFR 1.166-2(d)(3)(iv)(D), the Commissioner may revoke a bank's election to use the conformity method, if an electing bank fails to follow the conformity method of accounting to determine when debts become worthless, or if the bank's charge-offs are substantially in excess of those warranted by reasonable business judgement in applying the regulatory standards of the bank's supervisory authority. Accordingly, if an examination of a bank's books and records reveals that there is a pattern of charge-offs in the wrong year or under all the facts and circumstances the charge-offs were substantially in excess of reasonable business judgment in applying the regulatory standards of the bank's supervisory authority, the conformity election may be revoked.

Example: The conformity bad debt deduction should match book charge-offs. The examiner should determine, based upon a review of the reconciliation schedules provided, whether the bank has engaged in a practice of charging off loans in the wrong year, either early or late. A pattern of charge-offs in the wrong year could lead to a revocation of the conformity election.

In addition, as stated above, a bank's failure to meet the loan loss classification or charge-off requirements for a specific loan, generally will not result in an individual loan adjustment. If the pattern of failures is substantial enough, however, it may result in a determination to revoke the bank's conformity election.

Finally, in the case of an S&L where the creation of a specific reserve for loan losses results in a tax deduction for 100 percent of the portion of the debt classified as loss assets, electing conformity is not intended to allow a double deduction. Such a double deduction could result from the fluctuation in the specific reserve from one reporting period to the next. The examiner should compare the prior specific reserves per the Thrift Financial Reports to ensure that the same specific reserve for a particular loan does not result in a duplication of the tax deduction. If this duplication becomes a pattern, the examiner should consider revocation.

The examiner should use professional judgement in determining whether to pursue the extraordinary step of revoking a bank's conformity election. Based on the data collected, the team manager and team coordinator

Exhibit 4.30.2-1 (Cont. 4) (02-24-2025)**Guidelines on Auditing Bank Bad Debt Conformity Election**

should determine the extent of resources to devote to this issue. Conversations with the taxpayer and the banking technical advisors may assist the examiner in setting the scope and depth for examining this issue and help minimize the audit burden on both the taxpayer and the examination team.

III. EXAMPLES OF LOANS NOT SUBJECT TO CONFORMITY ELECTION

Bad debt deductions for loans not subject to regulatory loss classification standards are determined under the general rules of IRC 166.

It should also be remembered that not all loans of a bank are entitled to the conclusive presumption of worthlessness under the conformity election. For example, the examiner should confirm the bank owns the worthless loans for both book and tax purposes. Loans not owned for book purposes are not subject to regulatory loan loss classification standards and thus are outside the scope of the conformity election. In addition, the examiner should be aware that the bank's bad debt tax basis might be affected by the mark to market provisions under IRC 475.

The following are examples of some loans or portions of loans not subject to the conformity election because they are not subject to regulatory loan loss classification standards.

Securitized Loans - Many securitizations are treated as sale for book purposes (see Statement of Financial Accounting Standards 125 and 140), but are treated as financing arrangements for tax purposes. In these circumstances, if the bank does not own the loans for book/regulatory purposes, the loans cannot be charged off on the bank's books under the loss classification standards and, therefore, the conformity election cannot apply to the securitized loans. For example, credit card, installment and auto loan securitizations have generally been treated as sales for book purposes, but financing transactions for tax purposes. The determination of sale versus financing is highly fact intensive and requires a case-by-case analysis of the benefits and burdens of ownership.

Restructured Loans - A loan may be significantly modified for tax purposes. This significant modification requires the tax recognition of gain or loss, which may not exist for book purposes. See 26 CFR 1.1001-3.

Interest on Non-Performing Loans - A bank may cease to accrue interest income for book purposes, even though it continues to accrue the interest for tax purposes. Thus, there is no loan on the books for this unpaid interest.

Loans Accounted for on a Cost Recovery Basis - A bank with a loan that is considered delinquent or non-performing may still receive cash payments from the borrower. The bank may apply these payments first to principal for book purposes. However, for tax purposes, these payments may be recognized as interest income, based upon the terms of the loan document.

Interest Accrual Reversals - For book purposes, a bank may be required to reverse previously accrued interest income, when a loan is impaired or non-performing. However, interest income cannot be reversed for tax purposes. Thus, there is no loan of this interest for tax purposes.

In-Substance Foreclosures - In-Substance Foreclosures (ISF) represent the physical possession of the collateral property by a bank. An ISF is recorded as Other Real Estate Owned (OREO) for book purposes, even though a technical foreclosure has not taken place. In an ISF circumstance, the loan no longer exists for book purposes, but it still exists for tax purposes.

IV. PREVIOUSLY PUBLISHED DETERMINATIONS CONCERNING THE CONFORMITY ELECTION

Prior published determinations by the Chief Counsel's office in the conformity election area are being provided for informational purposes only. Please note that pursuant to IRC 6110(k)(3), Chief Counsel Advice may not be

Exhibit 4.30.2-1 (Cont. 5) (02-24-2025)**Guidelines on Auditing Bank Bad Debt Conformity Election**

used or cited as precedent. Such advice generally involves specific taxpayers based on specific facts and represents the thinking of Chief Counsel's office at the time of issuance.

FSA 199912005, Released March 26, 1999:

In response to a request for Field Service Advice, Counsel concluded that only loans classified as "loss assets" for regulatory purposes qualify as deductible bad debts under a valid conformity election, while loans classified as "substandard" or "doubtful" do not.

FSA 200018017, Released May 5, 2000:

On the facts presented, Counsel recommended in this Field Service Advice that Exam consider revoking the taxpayer's conformity election in the earliest open year under examination in accordance with 26 CFR 1.166-2(d)(3)(iv)(D). Also, any such revocation must be handled as a cut-off method with no attendant adjustment under IRC 481(a) with respect to loan amounts previously charged off for book purposes.

ITA 200027036, Released July 7, 2000:

In response to a request for Technical Assistance concerning the revocation of the conformity election under 26 CFR 1.166-2(d)(3), Counsel concluded the IRS may audit a bank that has made the conformity election. The audit determines whether the bank complied with the requirements of the accounting method in particular, as well as the requirements for a bad debt deduction in general.

This advice also discusses instances in which the conformity election may be revoked.

The case of *United States v. U.S. Bancorp*, 12 F. Supp. 2d 982 (D. Minn. 1998) is cited as a footnote in this advice. In this summons enforcement case, the bank argued that under a valid conformity election, the information sought by the IRS was irrelevant, since the election provides a conclusive presumption of worthlessness for bad debts. The court concluded that the conclusive presumption does not make information regarding those debts irrelevant to the legitimate determination of the bank's tax liabilities and the accuracy of the bank's tax return. Accordingly, the bank was required to comply with the summons.

CCA 200045030, Released November 9, 2000:

In response to a request for Technical Assistance concerning the conformity election under 26 CFR 1.166-2(d)(3), Counsel concluded, in part:

- The conclusive presumption of worthlessness standard set forth in 26 CFR 1.166-2(d)(3)(ii) can apply to consumer loans such as credit card loans and installment loans that are classified as a regulatory loss asset after the applicable period passes, assuming the bank owns the debt instrument or credit account for both regulatory and tax purposes.
- The IRS does not have the authority to question a bank's loan loss classification standards when a bank makes a conformity election and has received an Express Determination Letter. However, the IRS may revoke the conformity election, if a bank fails to follow the method of accounting required by the conformity election, or the bank's charge-offs were substantially in excess of reasonable business judgment in applying the regulatory standards of the bank's supervisory authority.

FSA 200129003, Released July 20, 2001:

In this Field Service Advice dealing with whether a building and loan association's treatment of bad debt losses was an accounting method change, Counsel stated that the conformity election under 26 CFR 1.166-2(d)(3) can apply equally to banks using the reserve method of accounting for bad debts and to banks using the specific charge-off method.

Exhibit 4.30.2-2 (02-24-2025)**Examination Guidance Related to Partial Worthlessness Deduction for Eligible Securities Reported by Insurance Companies****BACKGROUND**

IRC 166(a)(2) provides “[w]hen satisfied that a debt is recoverable only in part, the Secretary may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.”

Insurance companies are required by state law to file Annual Statements using the accounting principles set out in the National Association of Insurance Commissioners (NAIC) Accounting Practices and Procedures Manual which have been adopted by the states. SSAP 43R provides accounting rules that must be followed when loan-backed and other structured securities are impaired and subject to a charge-off. SSAP 43R became effective on September 30, 2009, and applies for all reporting periods ending on or after September 30, 2009.

DEFINITIONS

Term	Definition
Annual Statement	The annual statement, approved by the NAIC, which an insurance company is required to file with insurance regulatory authorities of a state.
Charge-off	An accounting entry or set of accounting entries that reduce the debt's carrying value and results in a realized loss or a charge to the statement of operations (as opposed to recognition of an unrealized loss) that is recorded on an insurance company's Annual Statement.
Eligible securities	Investments in loan-backed and structured securities within the scope of SSAP 43R, subject to section 166, and not subject to section 165(g)(2)(C), including Real Estate Mortgage Investment Conduit (REMIC) regular interests.
Insurance company	A life insurance company (as defined in section 816(a)) or a non-life insurance company (as defined in section 831(c)) that is subject to regulation as an insurance company, that is subject to taxation under Subchapter L of the Code, and that files an Annual Statement for which a state regulator has examination authority.

EXAMINATION GUIDANCE**A. IN GENERAL**

LB&I examiners should not challenge an insurance company's partial worthlessness deduction under IRC 166(a)(2) for eligible securities if the company complies with the following:

1. First Year Adjustment

For the first taxable year in which an insurance company applies this guidance (the “Adjustment Year”), which can be no earlier than the company's 2009 and no later than the company's 2012 taxable years, the company's partial worthlessness deduction under IRC 166(a)(2) for eligible securities is the same amount as the company's SSAP 43R credit-related impairment charge-offs for the same securities as reported on its Annual Statement except that the company reduces or increases its deduction by a positive or negative adjustment. The positive or negative adjustment is determined on December 31 of the Adjustment Year and is the difference between (i)

Exhibit 4.30.2-2 (Cont. 1) (02-24-2025)**Examination Guidance Related to Partial Worthlessness Deduction for Eligible Securities Reported by Insurance Companies**

the tax basis of eligible securities over (ii) the statutory carrying value of the same securities increased by any non-credit-related portion of any charge-off not allowed as deductible under this guidance. In no event may the tax basis of eligible securities be less than the post-charge-off statutory carrying value under SSAP 43R as adjusted for any non-credit impairment. The Adjustment Year partial worthlessness deduction may be negative depending on the size of a negative adjustment, and therefore may be an income item; and

2. SSAP 43R Credit-Related Charge-Off Conformity

For taxable years beginning after the Adjustment Year, the insurance company's partial worthlessness deduction under IRC 166(a)(2) for eligible securities is the same amount as the company's SSAP 43R credit-related impairment charge-offs for the same securities as reported on its Annual Statement. In no event may the tax basis of eligible securities be less than the post-charge-off statutory carrying value under SSAP 43R as adjusted for any non-credit impairment.

If an insurance company complies with both (1) and (2) above, LB&I examiners should not challenge an insurance company's partial worthlessness deduction under IRC 166(a)(2) for eligible securities as reported on its Federal income tax returns for all open years ending before the Adjustment Year.

B. IMPLEMENTATION**1. Under Examination**

If an insurance company is under examination and wants to apply the provisions of this guidance, LB&I examiners, in consultation with the company, will decide whether the most appropriate way to implement this guidance is to change the amount of the company's partial worthlessness deduction for eligible securities for the taxable year(s) under examination to be consistent with this guidance or allow the company to file amended Federal income tax returns. See paragraph A1 for the period in which an insurance company may choose to implement this guidance.

2. Not Under Examination

If an insurance company is not under examination, it may choose to implement the provisions of this guidance by filing amended Federal income tax returns, or by first applying this guidance for the company's current taxable year. In either case, the insurance company must attach a statement to its Federal income tax return for the Adjustment Year (either an amended return or the current taxable year return) stating that it is implementing the provisions of this guidance beginning in that Adjustment Year. See paragraph A1 for the period in which an insurance company may choose to implement this guidance. For a consolidated Federal income tax return, a separate statement should be attached for each insurance company.

C. CONSISTENCY REQUIREMENT

For this guidance to apply, an insurance company must use SSAP 43R credit-related impairment charge-off amount for all eligible securities that are partially worthless.

D. CERTIFICATION STATEMENT

Upon examination, if an insurance company has used its SSAP 43R credit-related impairment charge-offs of eligible securities reported on its Annual Statement as the amount of a partial worthlessness deduction under IRC 166(a)(2), it must sign and complete Exhibit 4.30.2-3, Certification Statement for Section 166 Partial Worthlessness Deduction ("Certification Statement").

An insurance company must complete all sections of the Certification Statement, have the statement signed by an authorized individual, and provide the statement to the LB&I examiner within 30 days of a request for the statement. A separate Certification Statement may be requested for each taxable year under audit. For a con-

Exhibit 4.30.2-2 (Cont. 2) (02-24-2025)**Examination Guidance Related to Partial Worthlessness Deduction for Eligible Securities Reported by Insurance Companies**

solidated Federal income tax return, a separate Certification Statement may be requested for each insurance company. An LB&I examiner will consider any insurance company not in compliance with these requirements ineligible for this guidance and subject to regular audit procedures.

The Certification Statement must be signed by an individual who is authorized to execute the insurance company's Federal income tax return for the taxable year under audit, and must certify, under penalty of perjury that, for the taxable year under audit, the taxpayer's SSAP 43R credit-related impairment charge-off for eligible securities reported on its Annual Statement are consistent with the section IRC 166(a)(2) partial worthlessness deduction claimed for the same eligible securities. Insurance companies should retain the underlying accounting documentation that would permit the LB&I examiner to reconcile the companies' Annual Statement with their partial worthlessness deductions for eligible securities reported on the Federal income tax return. If an insurance company fails to properly and timely submit the requested documentation that would permit the examiner to reconcile the company's statutory accounting impairment with its Federal income tax deductions for eligible securities, then the director of field operations may determine that this guidance does not apply to the insurance company.

Exhibit 4.30.2-3 (02-24-2025)**Certification Statement for Section 166 Partial Worthlessness Deduction**

Form Field	Taxpayer Information
Taxpayer Name	ABC Taxpayer
Taxpayer EIN	XX-XXXXXXX
Tax Year	XXXX

Annual Statement Information:

- a. Amount of the charge-off for eligible securities in compliance with SSAP 43R: _____
- b. Post-impairment statutory carrying value of eligible securities under SSAP 43R: _____
- c. Post-impairment tax basis of eligible securities: _____
- d. Non-credit related portion of the charge-off, if any: _____
- e. Positive or negative adjustment to the partial worthlessness deduction determined on December 31 of the Adjustment Year for the difference between (i) the tax basis of the eligible securities over (ii) the statutory carrying value of the same securities increased by any non-credit-related portion of any charge-off not allowed ad deductible under this guidance: _____

Relevant Period of the Annual Statement: _____

CERTIFICATION

By signing this certification statement, the taxpayer agrees to readily provide (upon request of the IRS) all relevant data and records to establish to the satisfaction of the IRS that the statements made in this certification statement are true, correct and complete.

I certify, under penalty of perjury, that for the taxable year to which this certification statement applies: (A) the taxpayer's credit-related impairment amounts of eligible securities reported on the Annual Statement are the same as the amounts of partial worthlessness deductions claimed with respect to the same securities on the taxpayer's Federal income tax return for the relevant taxable year; and (B) the tax basis of eligible securities reported on the Annual Statement is not less than the post-charge-off statutory carrying value of the same securities under SSAP 43R as adjusted for any non-credit impairment.

I certify, under penalty of perjury, that I have examined this certification statement, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature: _____

Date: _____

Title: _____

For corporations, the certification must be signed by an individual authorized under IRC 6062.

Exhibit 4.30.2-4 (02-24-2025)**LB&I Guidance Related to IRC 166 Deductions for Eligible Debt and Eligible Debt Securities****I. INTRODUCTION**

This guidance is for Large Business & International (LB&I) examiners regarding bad debt deductions claimed under IRC 166 by a Bank or Bank Subsidiary. In addition, this guidance clarifies that LB&I examiners will not challenge the inclusion of certain estimated selling costs in a Bank or Bank Subsidiary's bad debt deduction.

Independently determining worthlessness amounts under IRC 166 imposes a significant burden on Banks, Bank Subsidiaries, and LB&I examiners. Moreover, changes in bank regulatory standards and processes have created concerns about how to comply with the conclusive presumption under IRC 166.

Pending any further guidance modifying or superseding this, this guidance provides an administrative resolution generally based on accepting charge-off amounts reported by Banks and Bank Subsidiaries for GAAP and regulatory purposes as sufficient evidence of worthlessness. This guidance is intended to provide an efficient manner of resolving many bad debt deduction issues for Banks and Bank Subsidiaries and to more efficiently manage LB&I's audit resources until further guidance under IRC 166 is issued.

This guidance does not apply to small banks that use the reserve method of accounting for loan losses under IRC 585, but is available to small banks that do not use the reserve method of accounting for loan losses. LB&I may consider issuing separate guidance for determining the amount and timing of charge-offs under IRC 585.

II. DEFINITIONS

Term	Definition
Applicable Financial Statement	An applicable financial statement is either: a. A financial statement that is required to be filed by a Bank or Bank Subsidiary (see definitions below) with the Securities and Exchange Commission (the 10-K or the Annual Statement to Shareholders). b. A financial statement that is required to be provided by a Bank or Bank Subsidiary to a Bank Regulator.
Bank	A bank within the meaning of 26 CFR 1.166-2(d)(4)(i), modifying the definition with respect to foreign corporations by substituting the words "eligible debt or eligible debt securities" for loans, and subject to regulation by a Bank Regulator.
Bank Regulator	The Office of the Comptroller of the Currency (OCC), the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS) prior to its merger with the OCC, the Farm Credit Administration, any successor to any of the foregoing entities, or State authorities maintaining substantially equivalent standards as these Federal regulatory authorities. A "Bank Regulator" means the Bank Regulator responsible for the supervision of the Bank and its Bank Subsidiaries.

Exhibit 4.30.2-4 (Cont. 1) (02-24-2025)**LB&I Guidance Related to IRC 166 Deductions for Eligible Debt and Eligible Debt Securities**

Term	Definition
Bank Subsidiary	<p>An entity that:</p> <ul style="list-style-type: none"> a. Is not a Bank, but conducts business that a Bank may conduct. b. Is a member of the same affiliated group (within the meaning of IRC 1504(a)(1), determined without regard to the exception of S Corporations contained in IRC 1504(b)(8) as a Bank (“Owning Bank”) (or would be a member of the same affiliated group as Owning Bank after (c) below). c. Bears the same relationship to Owning Bank that the members of an affiliated group bear to their common parent under IRC 1504(a)(1). d. Is under the supervision of Owning Bank’s Regulator. <p>Note: For purposes of this definition (including for purposes of determining whether a partnership would be an “includible corporation” within the meaning of IRC 1504(b)), any partnership whose interests are wholly and directly owned by Owning Bank, a Bank wholly owned by Owning Bank, or one or more Bank Subsidiaries shall be treated as if it were a corporation; provided, however, that a partnership shall not be treated as wholly and directly owned by Owning Bank or Bank Subsidiaries if any interests in such partnership are owned by one or more entities in which the partnership, directly or indirectly, owns an interest.</p>
Charge-off of Eligible Debt	An accounting entry or set of accounting entries for a taxable year that reduces the basis of the eligible debt when the eligible debt is recorded in whole or part as a Loss Asset on the Bank or Bank Subsidiary’s Applicable Financial Statement for that year.
Charge-off of Eligible Debt Security	An accounting entry or set of accounting entries for a taxable year that reduces the eligible debt Security’s carrying value and results in a realized loss or a charge to the statement of operations (as opposed to recognition of an unrealized loss) that is recorded on a Bank or Bank Subsidiary’s Applicable Financial Statement for that year.
Eligible Debt	Any debt (whether originated or acquired) reported in the Applicable Financial Statement (balance sheet) of a Bank or Bank Subsidiary subject to a bad debt deduction under IRC 166, is not a security as described in IRC 165(g)(2)(C), is not subject to IRC 475, and is either within the scope of Accounting Standards Codification (ASC) 450 or ASC 310-40 under U.S. GAAP, or the predecessors or successors of such accounting standards, or would be subject to such accounting standards (or such predecessors or successors) if such debt were accounted for under U.S. GAAP (for example, accounting for under IFRS).

Exhibit 4.30.2-4 (Cont. 2) (02-24-2025)**LB&I Guidance Related to IRC 166 Deductions for Eligible Debt and Eligible Debt Securities**

Term	Definition
Eligible Debt Securities	Any debt securities reported in the Applicable Financial Statement (balance sheet) of a Bank or Bank Subsidiary subject to a bad debt deduction under IRC 166, are not debt securities as described in IRC 165(g)(2)(C), is not subject to IRC 475, and is either within the scope of Accounting Standards Codification (ASC) 450 or ASC 310-40 under U.S. GAAP, or the predecessors or successors of such accounting standards, or would be subject to such accounting standards (or such predecessors or successors) if such debt were accounted for under U.S. GAAP (for example, accounting for under IFRS). Debt securities classified as trading securities are excluded from the definition of eligible debt securities.
Express Determination Letter	A written determination that satisfies the express determination requirement described by 26 CFR 1.166-2(d)(3)(iii)(D).
Loss Asset	An eligible debt or eligible debt Security that meets the requirements of the loss asset classification under the regulatory standards and established policies of the Bank Regulator.

III. IRC 166 DEDUCTIONS FOR ELIGIBLE DEBT AND ELIGIBLE DEBT SECURITIES**A. Background**

IRC 166 (a)(1) provides that “[t]here shall be allowed as a deduction any debt which becomes worthless within the taxable year.”

IRC 166(a)(2) provides that “[w]hen satisfied that a debt is recoverable only in part, the Secretary may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.”

Treas. Reg. 1.166-2(a) provides that “[i]n determining whether a debt is worthless in whole or in part the district director will consider all pertinent evidence, including the value of the collateral, if any, securing the debt and the financial condition of the debtor.”

Banks can determine their bad debt deduction in one of four ways. First, they may apply the general facts and circumstances test under Treas. Reg. 1.166-2(a) to determine whether a debt is worthless in the same manner as other types of taxpayers. In the alternative, Banks may use one of two special rules provided in Treas. Reg. 1.166-2(d)(1) and (3). Finally, small banks are entitled to apply the reserve method of accounting for loan losses. See IRC 585.

Treas. Reg. 1.166-2(d)(1) provides a “conclusive presumption rule” under which worthlessness is generally presumed to occur in the same year that a bank, or other regulated corporation, charges off a debt in whole or in part pursuant to Federal or state bank regulatory rules and established policies, or pursuant to a specific order by a bank regulator.

Treas. Reg. 1.166-2(d)(3) provides a “conformity election” under which worthlessness is conclusively presumed if a Bank’s Bank Regulator makes an express determination that the bank maintains and applies loan loss classification standards that are consistent with regulatory standards.

Many Banks have subsidiaries that are not themselves Banks, but are facilitative of the Banks’ banking and lending businesses. In general, a Bank’s controlled subsidiaries are subject to the same supervision and

Exhibit 4.30.2-4 (Cont. 3) (02-24-2025)**LB&I Guidance Related to IRC 166 Deductions for Eligible Debt and Eligible Debt Securities**

oversight by Bank Regulators as the Bank, and a Bank Regulator generally applies identical standards to a Bank's controlled subsidiaries as they do to the Bank, where the controlled subsidiaries conduct any business that can be conducted by the Bank.

Note: See 12 USC 24a (subsidiaries of national banks); 12 USC 1831a (subsidiaries of FDIC insured State banks); 12 USC 1467a(c)(1), (2), (9) (subsidiaries of federal savings associations and savings and loan holding companies). See also 12 CFR 5.34 (operating subsidiaries of national banks); 12 CFR 362.1 - 362.4 (subsidiaries of FDIC insured State banks); 12 CFR 238.53, 238.54 (subsidiaries of thrift holding companies, previously at 12 CFR 584.2); 12 CFR 239.11 (subsidiaries of thrift holding companies in mutual form, previously at 12 CFR 575.14)

B. Issue Tracking

Any cases having this issue should use the following Uniform Issue List (UIL) number: UIL 166.07-00 - Bad Debt Deductions for Eligible Debt and Eligible Debt Securities - Banks and Bank Subsidiaries.

C. Examination Guidelines

LB&I examiners should not challenge a Bank or Bank Subsidiary's bad debt deduction for eligible debt or eligible debt securities as follows:

1. Bank or Bank Subsidiary using the general facts and circumstances test of Treas. Reg. 1.166-2(a)

Do not challenge a Bank or Bank Subsidiary's bad debt deduction for eligible debt and eligible debt securities if the deduction is the same amount as the amount of the credit-related impairment portion of its charge-off of eligible debt and the amount of the credit-related impairment portion of its charge-off of eligible debt securities as reported on its applicable financial statement.

In no event, however, may the post-deduction tax basis of eligible debt be less than the post-charge-off book basis of the eligible debt as increased by any portion of the charge-off not related to credit impairment, nor may the post-deduction tax basis of eligible debt securities be less than the post-charge-off carrying amount of the eligible debt securities as increased by any portion of the charge-off not related to credit impairment.

In addition, do not challenge the inclusion in the Bank or Bank Subsidiary's bad debt deduction for eligible debt of estimated selling costs to the extent such estimated selling costs are included in the charge-off reported in the Bank or Bank Subsidiary's applicable financial statement.

2. Bank or Bank Subsidiary using the conclusive presumption rule of Treas. Reg. 1.166-2(d)(1)

Do not challenge a Bank or Bank Subsidiary's bad debt deduction for eligible debt and eligible debt securities if the deduction is the sum of: (1) the amount of the credit-related impairment portion of its charge-off of eligible debt and the amount of the credit-related impairment portion of its charge-off of eligible Debt Securities as reported on its Applicable Financial Statement; and (2) the portion of the charge-off of eligible debt and eligible debt securities in excess of the credit-related impairment that was taken pursuant to a specific order or written confirmation (as described in Treas. Reg. 1.166-2(d)(1)) by a Bank Regulator as reported on its Applicable Financial Statement.

Do not challenge regardless of whether or not a Bank or Bank Subsidiary presents a specific order by Bank Regulators or confirmation in writing as described in Treas. Reg. 1.166-2(d)(1). However, a signed Certification Statement from the Bank or the Bank Subsidiary is required.

In no event, however, may the post-deduction tax basis of eligible debt be less than the post-charge-off book basis of the eligible debt as increased by any portion of the charge-off not related to credit impairment and reduced by any amount of the charge-off in excess of the credit-related impairment that was taken pursuant to a specific order or written confirmation (as described in Treas. Reg. 1.166-2(d)(1)) by a Bank Regulator, nor may

Exhibit 4.30.2-4 (Cont. 4) (02-24-2025)**LB&I Guidance Related to IRC 166 Deductions for Eligible Debt and Eligible Debt Securities**

the post-deduction tax basis of eligible debt securities be less than the post-charge-off carrying value of the eligible debt securities as increased by any portion of the charge-off not related to credit impairment and reduced by any amount of the charge-off in excess of the credit-related impairment that was taken pursuant to a specific order or written confirmation (as described in Treas. Reg. 1.166-2(d)(1)) by a Bank Regulator.

In addition, do not challenge the inclusion in the Bank or Bank Subsidiary's bad debt deduction for eligible debt of estimated selling costs to the extent such estimated selling costs are included in the charge-off reported in the Bank or Bank Subsidiary's Applicable Financial Statement.

3. Bank using the conformity election under Treas. Reg. 1.166-2(d)(3)

Do not challenge a Bank's bad debt deduction for eligible debt and eligible debt securities if a Bank made a proper conformity election under Treas. Reg. 1.166-2(d)(3) regardless of whether or not the express determination requirement as described in Treas. Reg. 1.166-2(d)(3)(iii)(D) is satisfied.

In addition, do not challenge the inclusion in the Bank bad debt deduction for eligible debt of estimated selling costs to the extent such estimated selling costs are included in the charge-off reported in the Bank Applicable Financial Statement.

D. Implementation**1. In General**

This guidance applies on an entity-by-entity basis. A Bank or Bank Subsidiary may apply this guidance no earlier than its 2010 taxable year and no later than a taxable year that begins in 2014. Pending any future guidance modifying or superseding this guidance, once a Bank or Bank Subsidiary chooses to apply this guidance, it must apply it consistently going forward from year to year.

If a Bank or Bank Subsidiary chooses to follow the provisions of this guidance, it may implement any applicable changes by filing amended returns or making the changes in its current taxable year. If a Bank or Bank Subsidiary is under examination, LB&I examiners, in consultation with the taxpayer, may decide whether it is appropriate to change the amount of bad debt deduction for the eligible debt and eligible debt securities for the open taxable year(s) under examination to be consistent with this guidance or to allow the taxpayer to file amended returns.

2. First Year Adjustment

If a Bank or Bank Subsidiary described in C.1 or C.2 above chooses to follow the provisions of this guidance, its first taxable year in which changes are made is the "Adjustment Year." For the Adjustment Year, LB&I Examiners should not challenge a Bank or Bank Subsidiary's bad debt deduction if the amount of the deduction is determined as provided in C.1, and, where applicable, in C.2 above, reduced or increased by a positive or negative adjustment, determined on December 31 of the Adjustment Year (or the last day of the Adjustment Year, if different from December 31) as set out below. The overall Adjustment Year bad debt deduction may be negative, and, depending on the size of the adjustment, may be an income item.

A. Bank or Bank Subsidiary described in C.1 for Eligible Debt and Eligible Debt Securities

1. The first step in determining the amount of the first year adjustment for eligible debt and eligible debt securities of a Bank or Bank Subsidiary described in C.1 above is to determine the amount of the bad debt deduction in the Adjustment Year as provided in C.1.
2. The second step in determining the amount of the first year adjustment for eligible debt and eligible debt securities is to determine the amount that is the difference between (i) the pre-charge-off tax basis of the eligible debt or eligible debt securities over (ii) the post-charge-off book basis of the same eligible debt (reflecting estimated selling costs as part of the charge-off) or post-charge-off

Exhibit 4.30.2-4 (Cont. 5) (02-24-2025)**LB&I Guidance Related to IRC 166 Deductions for Eligible Debt and Eligible Debt Securities**

carrying value of the eligible debt securities; the amount of this difference is increased by any portion of the charge-off not related to credit impairment and not allowed as deductible under this guidance.

3. The third step in determining the amount of the first year adjustment for eligible debt and eligible debt securities is to determine the amount representing the difference (whether positive or negative) between the amount determined in the first step in this section D.2.A over the amount determined in the second step in this section D.2.A. This is the amount of the first year adjustment.
4. In no event may the post-deduction tax basis of eligible debt or eligible debt securities be less than the post-charge-off book basis of the eligible debt or the post-charge-off carrying value of the eligible debt securities increased by any portion of the charge-off not related to credit impairment and not allowed as deductible under this guidance.

B. Bank or Bank Subsidiary described in C.2 for Eligible Debt and Eligible Debt Securities

1. The first step in determining the amount of the first year adjustment for eligible debt and eligible debt securities of a Bank or Bank Subsidiary described in C.2 above is to determine the amount of the bad debt deduction in the Adjustment Year as provided in C.2.
2. The second step in determining the amount of the first year adjustment for eligible debt and eligible debt securities is to determine the amount that is the difference between (i) the pre-charge-off tax basis of the eligible debt or eligible debt securities over (ii) the post-charge-off book basis of the same eligible debt (reflecting estimated selling costs as part of the charge-off) or the post-charge-off carrying value of the eligible debt securities where the charge-off was taken for credit-related impairment and any amount in excess of credit-related impairment pursuant to a specific order by a Bank Regulator, or pursuant to a written confirmation that a charge-off was made in accordance with the regulatory standards and established policies of the Bank Regulator; the amount of this difference is increased by any portion of the charge-off not related to credit impairment and not allowed as deductible under this guidance.
3. The third step in determining the amount of the first year adjustment for eligible debt and eligible debt securities is to determine the amount representing the difference (whether positive or negative) between the amount determined in the first step in this section D.2.B over the amount determined in the second step in this section D.2.B. This is the amount of the first year adjustment.
4. In no event may the post-deduction tax basis of eligible debt or eligible debt securities be less than the post-charge-off book basis of the eligible debt or the post-charge-off carrying value of the eligible debt securities increased by any portion of the charge-off not related to credit impairment, and reduced by any amount of the charge-off in excess of credit-related impairment that was taken pursuant to a specific order or written confirmation (as described in Treas. Reg. 1.166-2(d)(1)) by a Bank Regulator.

3. Charge-Off Conformity in Subsequent Years

For each taxable year beginning after the Adjustment Year, the amount of the bad debt deduction under IRC 166 for eligible debt and eligible debt securities should be determined as provided in C.1 for Banks and Bank Subsidiaries described in section C.1, and as provided in section C.2 for Banks and Bank Subsidiaries described in section C.2.

IV. CERTIFICATION STATEMENT

If the taxpayer has claimed a bad debt deduction under IRC 166 in compliance with the provisions of this guidance, then upon examination, the taxpayer must sign and complete Exhibit 4.30.2-5, Certification Statement for Section 166 Eligible Debt and eligible debt securities.

The taxpayer must complete all sections of the certification statement, have the statement signed by an authorized individual, and provide the statement to the LB&I examiner within 30 days of a request for the certification

Exhibit 4.30.2-4 (Cont. 6) (02-24-2025)**LB&I Guidance Related to IRC 166 Deductions for Eligible Debt and Eligible Debt Securities**

statement. A separate certification statement may be requested for each taxable year under audit. For a consolidated federal income tax return, a separate certification statement may be requested for each bank and bank subsidiary applying the terms of this guidance. A LB&I examiner will consider any taxpayer not in compliance with these requirements ineligible for this guidance and subject to regular audit procedures.

The certification statement must be signed by an individual who is authorized to execute the taxpayer's federal income tax return for the taxable year under audit, and must certify, under penalty of perjury that, for the taxable year under audit:

For taxpayers described in C.1 and C.2:

- a. The bad debt deduction claimed on the taxpayer's federal income tax return for eligible debt and eligible debt securities is the same amount as the amount of the credit-related impairment portion its charge-off of eligible debt and the same amount of the credit-related impairment portion of its charge-off of eligible debt securities as reported on the taxpayer's applicable financial statement for the same accounting period, subject to 2) below for Taxpayers described in C.2.
- b. The post-deduction tax basis of eligible debt or eligible debt securities is not less than the post charge-off book basis of the same eligible debt or the carrying value of the same eligible debt securities, as applicable under C.1 or C.2 above.

For taxpayers described in C.2:

- a. If the bad debt deduction claimed in the taxpayer's federal income tax return is in excess of the credit-related impairment portion of the charge-offs reported on the taxpayer's applicable financial statement, then such excess amount was charged-off pursuant to a specific order or written confirmation (as described in Treas. Reg. 1.166-2(d)(1)) by a Bank Regulator as reported on its Applicable Financial Statement.

In addition, the taxpayer should retain the underlying accounting documentation that would permit the LB&I examiner to reconcile the taxpayer's Applicable Financial Statement with the amount of its bad debt deduction for eligible debt and eligible debt securities reported on the taxpayer's federal income tax return. If a taxpayer fails to properly and timely submit the requested documentation, then the director of field operations or his/her delegate may determine that this guidance does not apply to the taxpayer.

Exhibit 4.30.2-5 (02-24-2025)**Certification Statement for Section 166 Eligible Debt and Eligible Debt Securities**

Form Field	Taxpayer Information
Taxpayer Name:	ABC Taxpayer
Taxpayer EIN:	XX-XXXXXXX
Tax Year:	XXXX
Relevant Period of Applicable Financial Statement:	MM/DD/YYYY
Status of Taxpayer (Bank or Bank Subsidiary):	enter bank or bank subsidiary
Taxpayer's Bank Regulator (for a Bank Subsidiary, list the Owning Bank's Regulator):	enter bank regulator
Specify whether the Taxpayer is described in the guidance under: C.1, C.2, or C.3:	enter C.1, C.2 or C.3

Please provide the following information for taxpayers described in the guidance under C.1, C.2, and C.3:

A. Amount of the Charge-off reported on the Applicable Financial Statement for:

- Eligible Debt:
- Eligible Debt Securities:

B. Amount of the IRC 166 bad debt deduction reported on Federal income return for:

- Eligible Debt:
- Eligible Debt Securities:

C. Post Charge-off:

- Book basis for Eligible Debt:
- Carrying value for Eligible Debt Securities:

D. Post-deduction tax basis for:

- Eligible Debt:
- Eligible Debt Securities:

Please provide the following information for taxpayers described in the guidance under C.1 and C.2:

E. Portion of the Charge-off not related to credit impairment, if any:

- Eligible Debt:
- Eligible Debt Securities:

F. First-Year Adjustment determined on December 31 of the Adjustment Year (or the last day of the Adjustment Year, if different):

- For Eligible Debt:
- For Eligible Debt Securities:

Exhibit 4.30.2-5 (Cont. 1) (02-24-2025)**Certification Statement for Section 166 Eligible Debt and Eligible Debt Securities**

Please provide the following information for taxpayers described in the guidance under C.2:

G. Portion of the Charge-off charged-off pursuant to a specific order or written confirmation by a Bank Regulator:

- For Eligible Debt:
- For Eligible Debt Securities:

CERTIFICATION

By signing this certification statement, the taxpayer agrees to readily provide (upon request of the IRS) all relevant data and records to establish to the satisfaction of the IRS that the statements made in this certification statement are true, correct and complete.

I certify, under penalties of perjury, that for the taxable year under audit:

For taxpayers described in C.1 and C.2 -

- The bad debt deduction claimed on the taxpayer's federal income tax return for eligible debt and eligible debt securities is the same amount as the amount of the credit-related impairment portion its charge-off of eligible debt and the same amount of the credit-related impairment portion of its charge-off of eligible debt securities as reported on the taxpayer's applicable financial statement for the same accounting period, subject to 2) below for Taxpayers described in C.2.
- The post-deduction tax basis of eligible debt or eligible debt securities is not less than the post charge-off book basis of the same eligible debt or the carrying value of the same eligible debt securities, as applicable under C.1 or C.2 above.

For taxpayers described in C.2, if the bad debt deduction claimed in the taxpayer's federal income tax return is in excess of the credit-related impairment portion of the charge-offs reported on the taxpayer's applicable financial statement, then such excess amount was charged-off pursuant to a specific order or written confirmation (as described in Treas. Reg. 1.166-2(d)(1)) by a bank regulator as reported on its applicable financial statement.

Signature: _____

Title: _____

Date: _____

For corporation, the certification must be signed by an individual authorized under IRC 6062.

Exhibit 4.30.2-6 (02-24-2025)**Certification Statement for IRC 199 Benefits and Burdens Analysis in Contract Manufacturing Arrangements - Taxpayer**

Form Field	Taxpayer Information
Tax Year(s) under examination:	XXXX
Taxpayer's Name:	ABC Taxpayer
Taxpayer's EIN:	XX-XXXXXXX
Contract Start Date:	XX/XX/XXXX
Contract End Date:	XX/XX/XXXX
Contract Identifying Information:	Enter information here

CERTIFICATION

By signing this Certification Statement, the taxpayer agrees to readily provide (upon request of the IRS) all relevant data and records under IRC 6001 to establish to the satisfaction of the IRS the statements made in this Certification Statement are true, correct, and complete.

(A) For purposes of IRC 199, the taxpayer has determined it had benefits and burdens over the Qualifying Property when the Qualifying Activities were performed and filed its Federal Income Tax return(s) consistent with this determination.

(B) The Contract to which this Certification Statement applies was not governed by the rules applicable to

- a. Expanded affiliated groups (EAGs) under Tres. Reg. 1.199-7.
- b. Qualifying in-kind partnerships under Treas. Reg. 1.199-3(i)(7) and 1.199-9(i).
- c. EAG partnerships under Treas. Reg. 1.199-3(i)(7) and 1.199-9(j).
- d. Government contracts under Treas. Reg. 1.199-3(f)(2)

(C) The Qualifying Activities occurred in whole or in significant part within the United States.

The taxpayer certifies under penalty of perjury that it has examined this Certification Statement, and to the best of its knowledge and belief, it is true, correct, and complete.

Taxpayer's Signature:

Date (Taxpayer):

Title (Taxpayer):

For corporations, the certification must be signed by an individual authorized under IRC 6062.

Exhibit 4.30.2-7 (02-24-2025)**Certification Statement for IRC 199 Benefits and Burdens Analysis in Contract Manufacturing Arrangements - Counterparty**

Form Field	Counterparty Information
Counterparty's Name:	ABC Counterparty
Counterparty's EIN:	XX-XXXXXXX
Contract Start Date:	XX/XX/XXXX
Contract End Date:	XX/XX/XXXX
Contract Identifying Information:	Enter information here

CERTIFICATION

The counterparty did not claim, and will not claim, the IRC 199 deduction for any taxable year covered by the Contract pursuant to which the same Qualifying Activities were performed.

The Counterparty certifies under penalty of perjury that it has examined this Certification Statement, and to the best of its knowledge and belief, it is true, correct, and complete.

Counterparty's Signature:

Date (Counterparty):

Title (Counterparty):

For corporations, the certification must be signed by an individual authorized under IRC 6062.

Exhibit 4.30.2-8 (02-24-2025)**Allocating Mixed Service Costs under IRC 263A to Certain Self-Constructed Property of Electric and Natural Gas Utilities**

This guidance provides instructions to LB&I examiners in determining whether a taxpayer's method for allocating Mixed Service Costs (MSC) to certain self-constructed tangible personal property (self-constructed property) is appropriate and should not be challenged. This guidance applies to examination activity relating to electric utilities, natural gas utilities, and combined electric and natural gas utilities.

BACKGROUND

Utility industry taxpayers may not use the Simplified Service Cost Method (SSCM) to allocate MSC to self-constructed property that is not mass-produced or does not have a high degree of turnover. See Treas. Reg. 1.263A-1(d)(1), (h)(1), (h)(2)(i)(D); see also Rev. Rul. 2005-53, 2005-2 C.B. 425.

For property that is not eligible for the SSCM, utility industry taxpayers should allocate MSC based on a reasonable allocation method such as the "facts and circumstances" method. See Treas. Reg. 1.263A-1(f)(1), (f)(4), (g)(4).

EXAMINATION GUIDANCE

1. Examiners should not challenge the reasonableness of the following MSC allocation method used by a utility industry taxpayer:

A. Step 1 - A consistent headcount ratio - The taxpayer allocates MSC among (i) transmission and distribution (T&D) and other departments, and between (ii) capital (i.e., production or resale) and non-capital activities within a T&D department based on an annually determined headcount ratio that is calculated in the following manner:

- a. The taxpayer categorizes total MSC among company-wide MSC, MSC attributable to deductible service departments, and MSC attributable to other non-company-wide departments (e.g., fleet, stores, engineering, electric transmission and distribution (Electric T&D), natural gas transmission and distribution (Gas T&D), and generation).
- b. The taxpayer allocates the company-wide MSC between capitalizable MSC and non-capitalizable MSC within the various departments based on a company-wide headcount ratio.
- c. The taxpayer allocates the non-company-wide MSC between capitalizable MSC and non-capitalizable MSC within the various departments based on a headcount ratio method that is consistently applied for the various departments. The denominator for a non-company-wide department's capital/non-capital allocation ratio includes only those department employees who actually benefited from the MSC being allocated. The non-capitalizable MSC are treated as deductible MSC, and the capitalizable MSC are further allocated between inventory and self-constructed property based on the production cost ratio calculated in step 2.

B. Step 2 - A production cost ratio with a limited reduction for purchased electricity and purchased natural gas - The taxpayer allocates capitalizable MSC among capital activities according to a production cost ratio that is computed as follows:

- a. **Numerator** - The numerator equals the total Section 263A costs of self-constructed property of both Electric T&D and Gas T&D, less all MSC capitalized, less the interest capitalized to Electric T&D and Gas T&D self-constructed property.
- b. **Denominator** - The denominator equals the total Section 263A costs of Electric T&D and Gas T&D self-constructed property, plus the Section 263A costs of electricity and natural gas sold, less 50 percent of the cost of the taxpayer's purchased electricity and purchased natural gas, less all MSC capitalized, less the interest capitalized to Electric T&D and Gas T&D self-constructed property. The

Exhibit 4.30.2-8 (Cont. 1) (02-24-2025)**Allocating Mixed Service Costs under IRC 263A to Certain Self-Constructed Property of Electric and Natural Gas Utilities**

denominator of the production cost ratio does not include depreciation expense and does not include the cost of purchased electricity or gas sold outside the taxpayer's service area (e.g., non-native load).

- c. **Application** - The production cost ratio is then multiplied by capitalizable MSC to arrive at the amount of MSC to be allocated to Electric T&D and Gas T&D self-constructed property. The remaining capitalizable MSC is allocated between electricity and natural gas inventory based on a reasonable cost ratio.
- d. **Reductions for temporary solutions** - The use of the headcount ratio and the production cost ratio takes into consideration the amount of costs that may have been capitalized to temporary solutions. Therefore, further reductions in the amount capitalized for temporary solutions should not be made.

2. This guidance does not apply if the taxpayer includes any of the following elements in its MSC allocation methods:

- a. **Additional costs of working in an energized environment treated as costs of maintaining electric service** - The taxpayer treats the additional costs of working more slowly in an energized environment as deductible costs of maintaining electric service instead of capitalizing the costs to self-constructed property. The taxpayer analogizes these costs to the costs of temporary relocations of existing power lines to maintain continuous service during a construction period of less than a year, as described in Revenue Ruling 73-203, 1973-1 C.B. 146.
- b. **Overly broad or other inappropriate cost drivers** - The taxpayer uses cost drivers that are overly broad or inappropriate, such as cost drivers that result in the allocation of MSC to departments that receive no benefit from the MSC.
- c. **Imputation of production costs based on hypothetical events** - The taxpayer uses a production ratio based on the estimated cost that would have been paid for generating power instead of purchasing power or an estimated headcount based on the number of employees that would have been required to generate the electricity instead of purchasing it.

3. This guidance does not address the following threshold issues:

- a. Whether a particular cost is a mixed service cost, as defined in Treas. Reg. 1.263A-1(e)(4)(ii)(C).
- b. Whether a department is a service department that generates both capitalizable service costs, as defined in Treas. Reg. 1.263A-1(e)(4)(ii)(A), and deductible service costs, as defined in Treas. Reg. 1.263A-1(e)(4)(ii)(B) (i.e., is a mixed service department).

Contacts:

If you have any questions, please contact the Inventory & 263A Practice Network.

Exhibit 4.30.2-9 (02-24-2025)**Guidance for Hedging of Variable Annuity Guaranteed Minimum Benefits by Insurance Companies****BACKGROUND**

Insurance companies are required by state law to file Annual Statements using the accounting principles set out in the National Association of Insurance Commissioners (NAIC) Accounting Practices and Procedures Manual, Statement of Statutory Accounting Principles (SSAP), or equivalent accounting standards mandated by insurance regulators.

Several Actuarial Guidelines (AGs) adopted by the NAIC provide standards for the valuation of reserves for VA contracts involving Guaranteed Minimum Benefit (GMxB). Insurance companies follow these AGs for the purposes of tax reserve calculations. AG 34 values reserves for guaranteed minimum death benefits (see Definitions, below). AG 39 values reserves for guaranteed living benefits (see Definitions, below).

Variable annuities have features of both life insurance and investment products. VA contracts generally are regulated by the State insurance regulators and the Securities and Exchange Commission. The sale of VA contracts is overseen by the Financial Industry Regulatory Authority. Current VA contracts often provide one or more GMxB. For example, a single contract may provide a Guaranteed Minimum Death Benefit and Guaranteed Minimum Living Benefit.

A VA contract with GMxB subjects insurance companies to the risk of incurring liabilities that exceed the value of segregated account assets for the contract. Insurance companies typically hedge the risks associated with GMxB obligations.

DEFINITIONS

The following table reflects terms and definitions.

Term	Definition
Actuarial Guideline (AG)	An interpretation published by the NAIC of a statute dealing with an actuarial topic. In the case of AGs dealing with reserve methods, the statute is the Standard Valuation Law (SVL). For example, AG 33, AG 34, AG 39, and AG 43 provide guidance regarding the application of the Commissioner's Annuity Reserve Valuation Method under the SVL to various kinds of annuities.
Annual Statement	The form that is approved by the NAIC, which is filed by an insurance company for the year with the insurance departments of States, Territories, and the District of Columbia. If the insurance company is not required to file the NAIC annual statement, "Annual Statement" means a pro forma annual statement filed with the company's federal income tax return under Treas. Reg. 1.6012-2(c)(5) or a certified independently-audited financial statement that is required to be provided to a government agency other than the IRS.
GMxB Hedge	A hedging transaction described under Treas. Reg. 1.1221-2(b) that is entered into by an insurance company for the purpose of managing the aggregate risks associated with GMxB under VA contracts (or counteracting such hedging transactions).
Eligible GMxB Hedge	A GMxB hedge that satisfies the identification and record keeping requirements under Treas. Reg. 1.1221-2(f).

Exhibit 4.30.2-9 (Cont. 1) (02-24-2025)**Guidance for Hedging of Variable Annuity Guaranteed Minimum Benefits by Insurance Companies**

Term	Definition
Guaranteed Minimum Benefit (GMxB)	A provision in a VA contract which guarantees a minimum payout. There are several types of guaranteed minimum benefits. A Guaranteed Minimum Death Benefit ("GMDB") provides a minimum guaranteed amount in the event of the policyholder's death, such as a guaranteed return of premiums paid for the VA contract. A Guaranteed Minimum Accumulation Benefit (GMAB) provides the policyholder with a guaranteed minimum account value on a specified date, regardless of the performance of the investment allocations chosen by the policyholder. A Guaranteed Minimum Income Benefit (GMIB) or a Guaranteed Minimum Withdrawal Benefit (GMWB) provides the policyholder with guaranteed payout amounts at future dates, even if the account value could not otherwise support the benefit. GMAB, GMIB, and GMWB are sometimes collectively referred to as Guaranteed Minimum Living Benefits (GMLB).

ISSUE TRACKING

Any cases having this issue should use UIL 446.33-01 Hedging Transactions – Variable Annuity Contracts.

EXAMINATION GUIDANCE

LB&I examiners should not challenge the method of accounting for eligible GMxB Hedges described below in section A of this guidance. This guidance applies only to the eligible GMxB Hedges related to the VA contracts issued before December 31, 2009. Eligible GMxB Hedges related to the VA contracts issued on or after December 31, 2009 should be accounted for using a method consistent with the matching requirements in Treas. Reg. 1.446-4(e)(1).

A. In General

The following is required:

- The identification of GMxB obligations as "ordinary obligations" under Treas. Reg. 1.1221-2(c)(2) and the eligibility of GMxB Hedges to qualify as hedging transactions under Treas. Reg. 1.1221-2(b).
- MTM values of eligible GMxB Hedges if they conform to MTM values reported in the company's annual statement, including all accompanying notes, schedules, and exhibits.
- Any reasonable method consistently used by an insurance company to allocate eligible GMxB hedge income, deductions, gains, and losses between VA contracts issued before December 31, 2009, and VA contracts issued on or after December 31, 2009.
- A method of accounting for recognition of the portion of Eligible GMxB Hedge income, deductions, gains, and losses allocable to VA contracts issued before December 31, 2009, that includes the following steps.

Step 1. MTM Valuation of Eligible GMxB Hedges:

- Hedge income, deduction, gain, or loss is determined for all eligible GMxB Hedges using a MTM method. For this purpose, the MTM Eligible GMxB hedge income, deduction, gain, or loss includes all realized gains and losses and non-marked items of income and deduction including periodic swap receipts and payments.
- All eligible GMxB Hedge income, deductions, gains and losses for the year are aggregated and netted.

Exhibit 4.30.2-9 (Cont. 2) (02-24-2025)**Guidance for Hedging of Variable Annuity Guaranteed Minimum Benefits by Insurance Companies**

- c. All costs of eligible GMxB Hedges are capitalized (included in basis or amount realized, as appropriate).

Step 2. Determine Aggregate Net Hedge Gain or Loss on all Eligible GMxB Hedges for the Taxable Year

Aggregate net hedge income, deduction, gain or loss is determined by adding:

- a. The amount of income, deduction, gain or loss realized during the taxable year with regard to any eligible GMxB hedge.
- b. The amount of MTM gain or loss on each eligible GMxB hedge outstanding at the close of the taxable year determined by using MTM values of eligible GMxB hedges that conform to MTM values reported in the company's annual statement, including all accompanying notes, schedules, and exhibits.
- c. All periodic swap amounts that accrue with regard to any eligible GMxB Hedge during the taxable year.

Step 3. Allocate Aggregate Net Hedge Gain or Loss Between --

- a. VA contracts issued before December 31, 2009.
- b. VA contracts issued on or after December 31, 2009.

Only the portion of the aggregate net hedge gain or loss allocable to VA contracts issued before December 31, 2009, is taken into account in Step 4 below. Hedge gain or loss allocable to VA contracts issued on or after December 31, 2009, should be accounted for using a method consistent with the matching requirement in Treas. Reg. 1.446-4(e)(1).

Step 4. Accounting for the Portion of Aggregate Net Hedge Gain or Loss Allocable to VA Contracts Issued Before December 31, 2009.**Net Hedge Gain**

- a. Net hedge gain for the year first offsets and reduces unrecognized net hedge losses carried forward from preceding years on a first-in-first-out (FIFO) basis.
- b. Net hedge gain for the year (after reduction for any offset against unrecognized net hedge losses from preceding years per step (a) above), is added to any unrecognized net hedge gains carried forward from preceding years. The sum of these net hedge gains is recognized to the extent of the net tax deduction for the year relating to the VA contracts issued before December 31, 2009. The net tax deduction is the amount of the GMxB accrued during the year plus (or minus) the increase (or decrease) in tax reserves for the GMxB for the year, but not less than zero. Even if the company only partially hedges its GMxB, the full increase in tax reserves and accrued benefits for all GMxB under VA contracts issued before December 31, 2009, are taken into account.
- c. The remaining portion of the net hedge gain, if any, is not recognized and is carried forward and taken into account in the succeeding year (except for purposes of applying item (d) below).
- d. Any hedge gain not taken into account within the five years following the year in which incurred is recognized no slower than ratably over the succeeding five years, i.e., one-fifth of the excess in each year.

Net Hedge Loss

- a. Net hedge loss for the year first offsets and reduces unrecognized net hedge gains carried forward from preceding years on a FIFO basis.
- b. Net hedge loss for the year (after reduction for any offset against unrecognized net hedge gains from preceding years per step (a) above) is added to any unrecognized net hedge losses carried forward

Exhibit 4.30.2-9 (Cont. 3) (02-24-2025)**Guidance for Hedging of Variable Annuity Guaranteed Minimum Benefits by Insurance Companies**

from preceding years. The sum of these net hedge losses, up to the increase for the taxable year in aggregate tax reserves for GMxB under VA contracts issued before December 31, 2009, is not recognized and is carried forward and taken into account in the succeeding year (except for purposes of applying item (d) below).

- c. The remaining portion of the net hedge loss, if any, is recognized and is currently deductible.
- d. Any hedge loss not taken into account within the five years following the year in which incurred is deducted no slower than ratably over the succeeding five years, i.e., one-fifth in each year.

B. Implementation

If insurance companies under examination want to apply the provisions of this guidance, LB&I examiners will make the change in method of accounting. This change will be made whether the existing method of accounting is permissible or impermissible, and whether the issue is under exam or not. The change will be made under the principles and requirements of Rev. Proc. 2002-18, 2002-1 C.B. 678 generally for the earliest open year under examination, except that, 1) if the parties agree (and notwithstanding section 5 of Rev. Proc. 2002-18), the year of change may be a taxable year other than the earliest open taxable year under examination, and 2) a positive 481(a) adjustment shall be taken into account over four taxable years under the rules of section 7 of Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696.

Insurance companies not under examination may apply the provisions of this guidance by filing a Form 3115, Application for Change in Accounting Method, under Rev. Proc. 2015-13.

C. Consistency Requirement

For this to apply, an insurance company must

- In determining hedge gains and losses on Eligible GMxB Hedges, use the MTM values for all eligible GMxB hedges conforming to MTM values for the same hedges reported in the company's annual statement, including all accompanying notes, schedules, and exhibits.
- Report net eligible GMxB hedge gains and losses for all VA contracts issued before December 31, 2009, consistent with the examination guidance.

D. Certification Statement

To be eligible for this guidance, an insurance company must sign and complete the attached Exhibit 4.30.2-10, Certification Statement for IRC 446: Related to Hedging of Variable Annuity Guaranteed Minimum Benefits Certification Statement ("certification statement"). An insurance company must complete all sections of the certification statement, have the statement signed by an authorized individual, and provide the statement to the LB&I examiner within 30 days of a request for the statement. A separate certification statement may be requested for each taxable year under audit. For a consolidated federal income tax return, a separate certification statement may be requested for each insurance company. An LB&I examiner will consider any insurance company not in compliance with these requirements ineligible for this guidance and subject to regular audit procedures.

E. Contact

Questions concerning this guidance should be directed to the Financial Institutions & Products Practice Network.

Exhibit 4.30.2-10 (02-24-2025)**Certification Statement for IRC 446: Related to Hedging of Variable Annuity Guaranteed Minimum Benefits by Insurance Companies**

Taxpayer Name:

Taxpayer EIN:

Tax Year:

Relevant Period of the Annual Statement:

Annual Statement Information:

A. Mark-to market value of all Eligible GMxB Hedges reported as of December 31:

B. Mark-to-market value of all Eligible GMxB Hedges related to variable annuity contracts issued:

- a. Before December 31, 2009:
- b. On or after December 31, 2009:

C. Total net mark-to-market amounts reported for the taxable for:

- a. Eligible GMxB Hedge Gains:
- b. Eligible BMxB Hedge Losses:

Certification

By signing this certification statement, the taxpayer agrees to readily provide (upon request of the IRS) all relevant data and records to establish to the satisfaction of the IRS that the statements made in this certification statement are true, correct and complete.

I certify, under penalty of perjury, that for the tax year to which this certification statement applies, the taxpayer used the method of accounting set forth in the examination guidance of this IRM to recognize Eligible GMxB hedge income, deductions, gains, and losses for VA contracts issued before December 31, 2009 for federal income tax purposes.

I certify, under penalty of perjury, that I have examined this certification statement, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature:

Date:

Title:

For corporations, the certification must be signed by an individual authorized under IRC 6062.

Exhibit 4.30.2-11 (02-24-2025)**Principle Based Reserves for Variable Annuity Contracts and Life Insurance Contracts****BACKGROUND**

Insurance companies are generally required, by state law, to file annual statements using statutory accounting principles set by the National Association of Insurance Commissioners (NAIC) as adopted by state insurance regulators. The Standard Valuation Law, which was promulgated by the NAIC and has been adopted by every state in some form, provides the basic rules for determining the minimum amount of reserves that must be held by a company. The Commissioner's Reserve Valuation Method (CRVM) (for life insurance contracts) and the Commissioner's Annuity Reserve Valuation Method (CARVM) (for annuity contracts) are in the Standard Valuation Law. The Standard Valuation Law is interpreted by the model regulations and actuarial guidelines, which are also promulgated by the NAIC. The NAIC's Valuation Manual is intended to consolidate into one document the minimum reserve requirements for insurance contracts.

IRC 805(a)(2) allows an insurance company to take a deduction for increases in certain life insurance reserves. More, specifically, IRC 807(b) provides that if, for any taxable year, the closing balance of "the items described in subsection (c)" (which includes life insurance reserves) exceeds the opening balance, the excess is taken into account as a deduction under IRC 805(a)(2). By contrast, IRC 807(a) provides that if the opening balance exceeds the closing balance, the excess is included in gross income under section 803(a)(2).

Note: Unless otherwise indicated, all section references are to sections of the Internal Revenue Code prior to the adoption of Pub. L. No. 115-97 (the TCJA), which amended the law relating to the computation of life insurance reserves under IRC 807(d). No inference should be drawn from this guidance regarding the computation of life insurance reserves under IRC 807(d) as amended by the TCJA.

Under IRC 807(d)(3), the tax reserve method that applies to a variable annuity contract is the CARVM prescribed by the NAIC that is in effect on the date the contract was issued. Similarly, the tax reserve method that applies to a life insurance contract is the CRVM prescribed by the NAIC that is in effect on the date the contract was issued.

CARVM for variable annuities is interpreted in AG 43, which clarifies the assumptions and methodologies that comply with the intent of the Standard Valuation Law. AG 43 became effective on December 31, 2009, for all variable annuity contracts issued on or after January 1, 1981. AG 43 was effectively incorporated in part 21 of the Valuation Manual (VM-21) adopted by the NAIC on December 2, 2012. VM-21 is effective for all variable annuity contracts issued on or after January 1, 2017.

In Notice 2010-29, 2010-1 C.B. 547, the IRS provided interim guidance to issuers of variable annuity contracts as a result of the NAIC's adoption of AG 43. Under the Notice, for a contract falling within the scope of AG 43 and issued on or after December 31, 2009, the tax reserve method, with respect to such a contract under IRC 807(d)(2)(A) and (d)(3), is the method prescribed in AG 43 for determining the Standard Scenario Amount (SSA) (applied using the appropriate valuation interest rate under IRC 807(d)(2)(B) and certain other adjustments). The provisions for determining the Conditional Tail Expectation Amount (CTEA) are not taken into account.

Part 20 of the Valuation Manual (VM-20) prescribes minimum reserve valuation standards for individual life insurance contracts. VM-20 incorporates a principle based reserve standard similar in concept to the AG 43 standard for variable annuity contracts. The requirements of VM-20 constitute the CRVM requirements effective for certain life insurance contracts issued on or after January 1, 2017.

The method of determining life insurance reserves for use in computing an insurance company's taxable income is prescribed in IRC 807(d). For this purpose, the reserve for a contract is generally equal to the greater of

- a. The net surrender value of such contract.
- b. The amount of the reserve determined under section 807(d)(2).

Exhibit 4.30.2-11 (Cont. 1) (02-24-2025)**Principle Based Reserves for Variable Annuity Contracts and Life Insurance Contracts**

In no event may the reserve for any contract exceed the amount taken into account with respect to that contract as of that time in determining the statutory reserves (reduced by any deferred and uncollected premiums taken into account in determining the statutory reserves). IRC 807(d)(1) (flush language); see also IRC 811(c).

IRC 807(d)(2) provides that the reserve for any contract must be determined using (i) the tax reserve method applicable to that type of contract, (ii) the greater of the applicable federal interest rate or the prevailing state assumed interest rate, and (iii) the prevailing commissioner's standard tables for morbidity or mortality adjusted as appropriate to reflect the risks (such as substandard risks) incurred under the contract that are not otherwise taken into account.

DEFINITIONS

The following table reflects terms and definitions relative to this guidance.

Term	Definition
Accepted Method	The Accepted Method for Eligible AG 39 VA Contracts, the Accepted Method for Eligible VA Contracts, and the Accepted Method for Eligible Life Insurance Contracts.
Accepted Method for Eligible AG 39 VA Contracts	The accepted Method for Eligible VA Contracts as applied to Eligible AG 39 Contracts as described in section D of this guidance.
Accepted Method for Eligible Life Insurance Contracts	The method described in section B.2. of this guidance.
Accepted Method for Eligible VA Contracts	The method described in section B.1. of this guidance.
AG 39	Actuarial Guideline XXXIX, published by the National Association of Insurance Commissioners.
AG 39 Year	Any tax year ending after December 31, 2009 in which the insurance company was required for statutory accounting purposes to maintain and did maintain a life insurance reserve for an Eligible AG 39 VA Contract that was determined under AG 43.
AG 43	Actuarial Guideline XLIII, published by the National Association of Insurance Commissioners.
Allocated Conditional Tail Expectation Amount (CTEA)	The amount of the Conditional Tail Expectation Amount (as described in AG 43 or VM-21, as applicable) allocated to an Eligible VA Contract (as described in AG 43 or VM-21, as applicable).
Allocated Deterministic Reserve/Stockastic Reserve	The amount of the deterministic reserve or stochastic reserve that is allocated to an Eligible Life Insurance Contract as described in VM-20.

Exhibit 4.30.2-11 (Cont. 2) (02-24-2025)**Principle Based Reserves for Variable Annuity Contracts and Life Insurance Contracts**

Term	Definition
Annual Statement	The annual statement, the form of which is approved by the National Association of Insurance Commissioners (NAIC), which is filed by an insurance company for the year with the insurance departments of States, Territories, and the District of Columbia. The term annual statement also includes a pro forma annual statement if the insurance company is not required to file the NAIC annual statement.
Conditional Tail Expectation Amount (CTEA)	The conditional tail expectation amount based on CTE (70) and is equal to the numerical average of the 30 percent largest values of the Scenario Greatest Present Values, as described in AG 43 or VM-21, as applicable.
Consolidated Group	A consolidated group as defined in Treas. Reg. 1.1502-1(h).
Eligible AG 39 VA Contract	A variable annuity contract with guaranteed living benefits issued before December 31, 2009, that was subject to AG 39.
Eligible Life Insurance Contract	A life insurance contract issued on or after January 1, 2017, that is subject to VM-20 and for which the insurance company implemented VM-20 for statutory accounting purposes.
Eligible VA Contract	A variable annuity contract issued on or after December 31, 2009, that is subject to either AG 43 or VM-21.
Federally Prescribed Reserve	The reserve determined under IRC 807(d)(2).
Net Premium Reserve	The amount of net premium reserve for an Eligible Life Insurance Contract as described in VM-20 (reduced for any amounts of deferred and uncollected net premiums).
Open Year	(1) A taxable year for which a refund claim may be filed under IRC 6511 if applying an Accepted Method for such year would result in a decrease in taxable income for such year or (2) A taxable year for which an assessment may be made under IRC 6501 if applying an Accepted Method for such year would result in an increase in taxable income for such year. The determination of what constitutes an Open Year should be made on a Consolidated Group basis.

Exhibit 4.30.2-11 (Cont. 3) (02-24-2025)**Principle Based Reserves for Variable Annuity Contracts and Life Insurance Contracts**

Term	Definition
Processable Adjustment	(1) Adjustments resulting from carrybacks or carry-forwards arising from the implementation of this guidance, (2) Adjustments resulting from final determinations from administrative or judicial proceedings, (3) Adjustments necessary to conform a year's closing tax reserve balance to the following year's opening tax reserve balance, or (4) Adjustments needed to correct purely mathematical or posting errors.
Standard Scenario Amount (SSA)	The reserve determined by applying the standard scenario method as described in AG 43 or VM-21, as applicable, to an Eligible VA Contract.
VM-20	Part 20 of the Valuation Manual, published by the National Association of Insurance Commissioners.
VM-21	Part 21 of the Valuation Manual, published by the National Association of Insurance Commissioners.
VM-20 Year	Any tax year in which the insurance company reported a life insurance reserve for an Eligible Life Insurance Contract on its Annual Statement.

ISSUE TRACKING

Any cases having this issue should use UIL Code 807.03-02.

EXAMINATION GUIDANCE**A. In General****1. Guidance Regarding Eligible VA Contracts & Eligible Life Insurance Contracts**

For tax years 2010 through 2016, LB&I examiners should discontinue any current examination of the federally prescribed reserve for eligible VA contracts if the insurance company timely provides a copy of the certification statement for eligible VA contracts described in this guidance. If an insurance company implements this guidance, LB&I examiners should not make any adjustments to taxable income reported on an insurance company's original returns (such as allowing claims for refunds and affirmative adjustments) for tax years 2010 through 2016 that are based on adjustments to the federally prescribed reserve for eligible VA contracts unless the adjustments are processable adjustments.

Note: A reference to a year (e.g. 2017) refers to a taxable year that begins within the referenced calendar year.

For the tax year 2017, LB&I examiners should not challenge the federally prescribed reserve for eligible VA contracts or eligible life insurance contracts reported on the insurance company's return if the method used is described in this guidance and the insurance company provides the certification statement described in this guidance. An insurance company's compliance with this guidance may be examined in connection with an examination of the 2017 tax year.

Exhibit 4.30.2-11 (Cont. 4) (02-24-2025)**Principle Based Reserves for Variable Annuity Contracts and Life Insurance Contracts**

For tax years after 2017, LB&I examiners also should not challenge any ten-year spread resulting from implementation of the methods described in this guidance that is taken into account as described in this guidance if the insurance company timely provides a copy of the certification statement for eligible VA contracts described in this guidance.

Please contact the LB&I Insurance Practice Network for guidance.

2. Guidance Regarding Eligible AG 39 VA Contracts

For tax years 2010 through 2016, LB&I examiners should discontinue any current examination of the federally prescribed reserve for eligible AG 39VA contracts if the insurance company timely provides a copy of the certification statement for eligible AG 39 VA contracts described in this guidance. If an insurance company implements this guidance, LB&I examiners should not make any adjustments to taxable income reported on an insurance company's original returns (such as allowing claims for refunds and affirmative adjustments) for tax years 2010 through 2016 that are based on adjustments to the federally prescribed reserve for eligible AG 39 VA contracts unless the adjustments are processable adjustments.

For the tax year 2017, LB&I examiners should not challenge the federally prescribed reserve for eligible AG 39 VA contracts reported on the insurance company's return if the method used is described in this guidance and the insurance company provides the certification statement described in this guidance. An insurance company's compliance with this guidance may be examined in connection with an examination of the 2017 tax year.

For tax years after 2017, LB&I examiners also should not challenge any ten-year spread resulting from implementation of the method described in this guidance that is taken into account as described in this guidance if the insurance company timely provides a copy of the certification statement for eligible AG 39 VA contracts described in this guidance.

Please contact the LB&I Life Insurance Practice Network for guidance.

3. Additional Sections of this Guidance

Section B of this guidance describes the accepted methods for computing the federally prescribed reserves for eligible VA contracts and eligible life contracts. Section C describes how these accepted methods should be implemented. Section D describes the accepted method for computing the federally prescribed reserve for eligible AG 39 VA contracts and how this method should be implemented. Section E requires that certain values used in computing the federally prescribed reserve be those used on the annual statement and provides other rules for implementing this guidance. Section F describes the manner in which the TCJA transition rule for life insurance reserves should be implemented by insurance companies adopting this guidance. Section G describes the certification that an insurance company must provide to be subject to this guidance.

B. Accepted Methods for Determining the Federally Prescribed Reserve**1. Accepted Method for Eligible VA Contracts**

The federally prescribed reserve for an eligible VA contract will be treated as the sum of:

- a. The tax-adjusted standard scenario amount (i.e., adjusted to take into account the interest rate and tables required by IRC 807(d)(2).
- b. 96% of the excess (if any) of the allocated conditional tall expectation amount over the standard scenario amount (not tax-adjusted).

The life insurance reserve for an eligible VA contract under IRC 807(d) is equal to the greater of:

- a. The net surrender value of such contract.
- b. The federally prescribed reserve described above.

Exhibit 4.30.2-11 (Cont. 5) (02-24-2025)**Principle Based Reserves for Variable Annuity Contracts and Life Insurance Contracts**

In no event may the reserve for any contract exceed the amount taken into account with respect to that contract as of the time in determining the statutory reserves (reduced by any deferred and uncollected premium taken into account in determining the statutory reserves). IRC 807(d)(1) (flush language).

2. Accepted Method for Eligible Life Insurance Contracts

The federally prescribed reserve for an eligible life insurance contract will be treated as the sum of:

- a. The tax-adjusted net premium reserve (i.e., adjusted to take into account the interest rate and tables required by IRC 807(d)(2)).
- b. 96% of the excess of the allocated deterministic reserve/stochastic reserve (if any) over the net premium reserve (not tax-adjusted).

The life insurance reserve for an eligible life insurance contract under IRC 807(d) is equal to the greater of:

- a. The net surrender value of such contract.
- b. The federally prescribed reserve described above.

In no event may the reserve for any contract exceed the amount taken into account with respect to that contract as of that time in determining the statutory reserves (reduced by any deferred and uncollected premiums taken into account in determining the statutory reserves). IRC 807(d)(1) (flush language).

C. Implementation of the Accepted Methods**1. Implementation for Eligible VA Contracts**

The implementation of the accepted method for eligible VA contracts depends on whether a ten-year spread is required. For purposes of this guidance, a ten-year spread is required to implement the accepted method for eligible VA contracts as described in this guidance unless one of these apply:

- a. There would be no IRC 807(f) adjustment as a result of the application of the accepted method if the insurance company were to apply the accepted method in the earliest open year that is a VM-21/AG 43 year and consistently in subsequent years.
- b. The first VM-21/AG 43 year in which the allocated conditional tail expectation amount exceeds the standard scenario amount (not tax-adjusted) is an open year.
- c. The insurance company's earliest open year that is a VM-21/AG 43 year reflects an operations loss carry forward from the insurance company's first VM-21/AG-43 year that is after 2009 or the insurance company's first VM-21/AG-43 year in which the allocated conditional tail expectation amount exceeds the standard scenario amount (not tax adjusted).

No Ten-Year Spread Required. If a ten-year spread is not required (as described above), then the federally prescribed reserve for an eligible VA contract as of the close of 2017, is computed with the accepted method for VA contracts. Accordingly, the increase or decrease in the balance of life insurance reserves for eligible VA contracts for 2017 is the difference between:

- a. The opening life insurance reserve tax balance for 2017, as previously determined and reported on an original return adjusted as appropriate to reflect any processable adjustment.
- b. The closing life insurance reserve tax balance for 2017, computed with the accepted method for eligible VA contracts.

Ten-Year Spread Required. If a ten-year spread is required (as described above), then the insurance company may implement the accepted method for eligible VA contracts and the associated ten-year spread under either of the following two options; provided, however, that if an insurance company has a tax year that is not an open year after the earliest open year that is a VM-21/AG 43 year tax, then Option 1 must be used.

Exhibit 4.30.2-11 (Cont. 6) (02-24-2025)**Principle Based Reserves for Variable Annuity Contracts and Life Insurance Contracts**

Option 1 - Adjustments are computed as if an insurance company implemented the accepted method for eligible VA contracts in 2016.

(a) The ten-year spread is computed as if the accepted method for eligible VA contracts had been implemented in 2016, and the computation of the ten-year spread included contracts issued in 2016. Accordingly, the ten-year spread for eligible VA contracts is the difference between:

- a. The opening life insurance reserve tax balance for 2017, as previously determined and reported on an original return adjusted as appropriate to reflect any processable adjustments.
- b. The opening life insurance reserve tax balance for 2017, computed with the accepted method for eligible VA contracts.

The ten-year spread amount is taken into account in equal amounts over 10 tax years starting in 2017.

(b) The increase or decrease in the balance of life insurance reserves for eligible VA contracts for 2017 is the difference between:

- a. The opening life insurance reserve tax balance for 2017, computed with the accepted method for eligible VA contracts.
- b. The closing life insurance reserve tax balance for 2017, computed with the accepted method for eligible VA contracts.

Option 2 - Adjustments are computed as if an insurance company implemented the accepted method for eligible VA contracts in each open year, but the aggregate amount of such adjustments is taken into account on the 2017 tax return.

(a) The ten-year spread is computed as if the accepted method for eligible VA contracts had been implemented in the earliest open year that is a VM-21/AG 43 year (without regard to any eligible VA contracts issued in the such year) and allocated equally to the ten tax years beginning immediately after such year.

- a. The cumulative amount of the ten-year spread allocated to each year through 2017 is taken into account in 2017.
- b. The remaining portions of the ten-year spread allocated to 2018 and subsequent years are taken into account in each of those future years.

(b) Aggregate adjustments to life insurance tax reserves previously determined and reported on an original return (adjusted as appropriate to reflect any processable adjustments) that otherwise would have been required to reflect implementation of the accepted method for eligible VA contracts in the earliest open year that is a VM-21/AG 43 year are taken into account in 2017.

2. Implementation for Eligible Life Insurance Contracts

For insurance companies that adopted VM-20 in 2017, the accepted method for eligible life insurance contracts is implemented by computing the federally prescribed reserve for 2017 for an eligible life insurance contract using the accepted method for eligible life insurance contracts.

D. Accepted Method and Implementation for Certain Variable Annuity Contracts Issued Before December 31, 2009

The accepted method for eligible AG 39 VA contracts may be implemented for eligible AG 39 VA contracts in the same manner as the accepted method for eligible VA contracts is implemented for eligible VA contracts with references to VM-21/AG 43 years considered as references to AG 39 years and references to eligible VA contracts considered as references to eligible AG 39 VA contracts.

E. Additional Provisions

Exhibit 4.30.2-11 (Cont. 7) (02-24-2025)**Principle Based Reserves for Variable Annuity Contracts and Life Insurance Contracts**

In implementing the accepted method for eligible VA contracts and/or the accepted method for eligible AG 39 VA contracts, an insurance company must use the standard scenario amount and conditional tail expectation amount reported under AG 43 and VM-21 in the company's annual statement, including all accompanying notes, schedules, and exhibits.

In implementing the accepted method for eligible life insurance contracts, an insurance company must use the net premium reserve, deterministic reserve, and stochastic reserves reported under VM-20 in the company's annual statement, including all accompanying notes, schedules, and exhibits.

If an insurance company implements the accepted method for eligible VA contracts, it must also implement the accepted method for life insurance Contracts for any Eligible Life Insurance Contracts. If an insurance company implements the Accepted Method for Eligible VA Contracts or the Accepted method for eligible life insurance contracts, such methods (and any adoption of either option 1 or option 2 in section C.1. of this guidance) must also be implemented by all members of any consolidated group of which such insurance company is a member at any time during the taxable year.

An insurance company will be considered to have properly implemented this guidance if it attempts in good faith to implement this guidance and subsequently and in good faith provides any necessary corrections or additional information.

F. Coordination with Pub. L. No. 115-97 (TCJA)

For purposes of implementing the transition relief under section 13517(c)(3) of the TCJA for insurance companies that follow this guidance, the reserve referenced in section 13517(c)(3)(A)(ii) must take into account the determination of the reserve in accordance with this guidance.

G. Certification Statement

To be eligible for this guidance, an insurance company must sign and complete in good faith (and timely provide any necessary corrections) the attached Exhibit 4.30.2-12, Certification Statement for IRC 807 Principle Based Reserves for Variable Annuity Contracts (AG 43/VM-21) and Life Insurance Contracts (VM-20) ("Certification Statement"). An insurance company must complete all sections of the certification statement, have it signed by an authorized individual, and attach it to its 2017 return. If the insurance company is under exam for any tax year, the insurance company must provide a copy of the certification statement to the LB&I examiner within 30 days of a request for such statement. For a consolidated federal income tax return, a separate certification statement may be requested for each insurance company. An LB&I examiner will consider any insurance company not in compliance with these requirements to be ineligible for this guidance and subject to regular audit procedures.

The certification statement must be signed by an individual who is authorized to execute the insurance company's federal income tax return. The individual must certify, under penalty of perjury, that the insurance company and any consolidated group of which it is a member:

- a. Used the accepted method(s) set forth in this guidance.
- b. Computed the ten-year spread, if any, as set forth in this guidance.
- c. Agrees to properly report the ten-year spread in accordance with this guidance.
- d. Agrees not to pursue a refund claim for any issue covered by this guidance that is inconsistent with the acceptance of this guidance.

Note: Provided, however, that a refund claim may be pursued if the insurance company's claim (or claim of the consolidated group of which the insurance company is a member) is based on a good-faith assertion that this guidance has been erroneously implemented, a good-faith correction necessary to properly implement this guidance, or a processable adjustment.

Exhibit 4.30.2-11 (Cont. 8) (02-24-2025)**Principle Based Reserves for Variable Annuity Contracts and Life Insurance Contracts**

Insurance companies should retain the underlying accounting documentation that would permit the LB&I examiner to verify the insurance company's compliance with the requirements of this guidance. If an insurance company fails to properly and timely submit the requested documentation, then the LB&I examiner may determine that this guidance does not apply to the insurance company (or any member of the consolidated group of which the insurance company is a member).

H. Contact

Questions concerning this guidance should be directed to the LB&I Life Insurance Practice Network.

Exhibit 4.30.2-12 (02-24-2025)**Certification Statement for IRC 807 Related to Principle Based Reserves for Variable Annuity Contracts (AG 43/VM-21) and Life Insurance Contracts (VM-20)**

Insurance Company Name:

EIN:

Tax Year:

Relevant Period of the Annual Statement:

This Certification Statement must be completed for each insurance company, without regard to whether it is a member of a Consolidated Group.

If the insurance company is a member of a Consolidated Group, please provide:

Name of the Parent of the Consolidated Group:

EIN of the Parent of the Consolidated Group:

A. Indicate for which of the following types of contracts the 2017 tax return reflects the adjustment described in this guidance:

[] Eligible VA Contracts

[] Eligible AG 39 VA Contracts

[] Eligible Life Insurance Contract

B. Information for Implementing the Accepted Method when there is no ten-year spread required:

Type of contract	*Opening Balance for 2017	**Closing Balance for 2017
Eligible VA Contracts	X,XXX	X,XXX
Eligible AG 39 VA Contracts	X,XXX	X,XXX
Eligible Life Insurance Contracts	X,XXX	X,XXX

*Opening life insurance reserve tax balance for 2017, as previously determined and reported on a return (adjusted as appropriate to reflect any Processable Adjustment).

**Closing life insurance reserve tax balance for 2017 computed under the Accepted Method.

C. If a ten-year spread is required, please choose Option 1 or Option 2 as described in the guidance and provide the information below:

[____] Option 1	Eligible VM-21/AG 43 VA Contracts	Eligible AG 39 VA Contracts
First Open Year	XXXX	XXXX

Exhibit 4.30.2-12 (Cont. 1) (02-24-2025)**Certification Statement for IRC 807 Related to Principle Based Reserves for Variable Annuity Contracts (AG 43/VM-21) and Life Insurance Contracts (VM-20)**

[____] Option 1	Eligible VM-21/AG 43 VA Contracts	Eligible AG 39 VA Contracts
Opening life insurance reserve tax balance for 2017, as previously determined and reported on a return (adjusted as appropriate to reflect any Processable Adjustment):	X,XXX	X,XXX
Opening life insurance reserve tax balance for 2017 computed with the Accepted Method:	X,XXX	X,XXX
Ten-year spread amount for each of the 10 years in which adjustment is taken into account:	X,XXX	X,XXX
Closing life insurance reserve tax balance for 2017 compute with the Accepted Method:	X,XXX	X,XXX
The increase or decreased in the balance of the life insurance tax reserves for 2017:	X,XXX	X,XXX

[____] Option 2	Eligible VM-21/AG 43 VA Contracts	Eligible AG 39 VA Contracts
First Open Year:	XXXX	XXXX
Are there any Open year that precede a year that is not an Open Year?	yes or no	yes or no
Amount of ten-year spread allocated to each open year:	X,XXX	X,XXX
Cumulative amount of the ten-year spread taken into account in 2017:	X,XXX	X,XXX
Remaining ten-year spread allocable to 2018 and subsequent years:	X,XXX	X,XXX
The amount of life insurance tax reserve adjustments for each year prior to 2017 required to reflect the implementation of the Accepted Method:	X,XXX	X,XXX

CERTIFICATION

Exhibit 4.30.2-12 (Cont. 2) (02-24-2025)**Certification Statement for IRC 807 Related to Principle Based Reserves for Variable Annuity Contracts (AG 43/VM-21) and Life Insurance Contracts (VM-20)**

By signing this certification statement, the insurance company agrees to readily provide (upon request of the IRS) all relevant data and records to establish to the satisfaction of the IRS that the statements made in this certification statement are true, correct and complete.

I certify, under penalty of perjury, that for the tax year to which this certification statement applies, the insurance company and each member of the consolidated group of which the insurance company is a member:

- a. Used the method(s) set forth in this guidance.
- b. Computed the ten-year spread in compliance with this guidance.
- c. Agrees to properly report the ten-year spread in accordance with this guidance.
- d. Agrees not pursue a refund claim for any issue covered by this guidance that is inconsistent with the acceptance of this guidance.

Note: Provided, however, that a refund claim may be pursued if the insurance company's claim (or claim of the consolidated group of which the insurance company is a member) is based on a good-faith assertion that this guidance has been erroneously implemented or is based on a processable adjustment.

I certify, under penalty of perjury, that I have examined this certification statement, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature:

Date:

Title:

For corporations, the certification must be signed by an individual authorized under IRC 6062.

Exhibit 4.30.2-13 (02-24-2025)**Certification Statement for IRC 475 Valuation**

Taxpayer Name:

Taxpayer EIN:

Tax Year:

Qualified Financial Statement:

Relevant Period of the Qualified Financial Statement:

CERTIFICATION

By signing this certification statement, the taxpayer agrees to readily provide (upon request of the IRS) all relevant data and records to establish to the satisfaction of the IRS that the statements made in this certification statement are true, correct and complete.

I certify, under penalty of perjury, that for the tax year to which this certification statement applies, the taxpayer's mark-to-market values reported on its qualified financial statements are consistent with the IRC 475 values for the same securities and/or commodities reported on the taxpayer's federal income tax return for the relevant tax year for all entities included in the consolidated tax return that use the IRC 475 mark-to-market method of accounting.

I certify, under penalty of perjury, that no tax return Schedule M adjusting entries or other book to tax adjusting entries were made regarding the IRC 475 mark-to-market values.

I certify, under penalty of perjury, that no deferred tax assets, deferred tax liabilities, or valuation allowances were reported for U.S. GAAP (FAS 109/ASC 740) purposes regarding any IRC 475 mark-to-market values.

I certify, under penalty of perjury, that I have examined this certification statement, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature:

Date:

Title:

For corporations, the certification must be signed by an individual authorized under IRC 6062. For partnerships, the certification must be signed by an individual authorized under IRC 6063. All certifications must be signed under penalty of perjury.

Exhibit 4.30.2-14 (02-24-2025)**Pharmaceutical Drugs and Therapeutic Biologics Development Process Certification Statement**

Taxpayer Name:

Taxpayer EIN:

Tax Year:

CERTIFICATION

By signing this certification statement, the taxpayer agrees to readily provide (upon request of the IRS) all relevant data and records required under IRC 6001 to establish to the satisfaction of the IRS that the statements made in this certification statement are true, correct and complete.

(A) the taxpayer's qualified research expenses (QREs) are computed in accordance with IRC 41(b),

(B) in computing the QREs, the taxpayer excluded the activities listed in IRC 41(d)(4); and

(C) in computing the IRC 41 credit, the taxpayer included QREs relating to stages 1 and 2 of the pharmaceutical drug and Therapeutic Biologics Development Process and clinical trials required by the FDA related to accelerated approvals in the amount of \$_____.

I certify, under penalty of perjury, that I have examined this certification statement, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature:

Date:

Title:

For corporations, the certification must be signed by an individual authorized under IRC 6062.

Exhibit 4.30.2-15 (02-24-2025)

ASC 730 (2017 and 2020) Appendix A: Certification Statement Claiming Adjusted ASC 730 Financial Statement R&D as QREs**Appendix A – Certification Statement Claiming Adjusted ASC 730 Financial Statement R&D as QREs.****Certification Statement****Taxpayer Name:****Taxpayer EIN:****Taxable Year Ending:****Relevant Period(s) of Applicable Certified Audited Financial Statement(s):****CERTIFICATION**

By signing this Certification Statement, Taxpayer agrees to promptly provide (upon request of the IRS) all relevant data and records to establish to the satisfaction of the IRS that the statements made in this certification statement are true, correct and complete.

I certify, under penalties of perjury, that for the taxable year ending

the computation of Adjusted ASC 730 Financial Statement R&D has been computed in accordance with the definitions and methodology set forth in this guidance and that all information provided in accordance with this guidance, to the best of my knowledge and belief, is true, correct and complete.

Signature:**Title:****Date:**

For corporations, the certification must be signed by an individual authorized under section 6062. This completed and signed Certification Statement must be provided to the LB&I examiner upon request within a time period subject to LB&I IDR processes.

Exhibit 4.30.2-16 (02-24-2025)**ASC 730 (2017 and 2020) Appendix B: Reconciliation of form 6765 QREs to Adjusted ASC 730 Financial Statement R&D**

Form 6765 Line Number	Description	(A) Adjusted ASC 730 Financial Statement R&D QRE Amounts: From Appendix C	(B) Additional QRE Amounts from ASC 730 Accounts not Included in Adjusted ASC 730 Financial Statement R&D	(C) Additional QRE Amounts not from ASC 730 Accounts	(D) Total QRE Amounts Claimed on Form 6765 (A+B+C=D)
5 or 24	Wages for qualified services (do not include wages used in figuring the work op- portunity credit)	X,XXX,XXX	X,XXX,XXX	X,XXX,XXX	XX,XXX,XXX
6 or 25	Cost of supplies	X,XXX,XXX	X,XXX,XXX	X,XXX,XXX	XX,XXX,XXX
7 or 26	Rental or least costs of computers (see Form 6765 instruc- tions)	X,XXX,XXX	X,XXX,XXX	X,XXX,XXX	XX,XXX,XXX
8 or 27	Enter the ap- plicable percentage of contract research expenses (see Form 6765 instruc- tions)	N/A	X,XXX,XXX	X,XXX,XXX	XX,XXX,XXX
(blank cell)	Total*	XX,XXX,XXX	XX,XXX,XXX	XX,XXX,XXX	XX,XXX,XXX

* Column A total must equal Line 19 in Appendix C

Exhibit 4.30.2-17 (02-24-2025)**ASC 730 (2017) Appendix C: Computation of Adjusted ASC 730 Financial Statement R&D****Appendix C – Computation of Adjusted ASC 730 Financial Statement R&D**

Line #			Year
1	ASC 730 Financial Statement R&D	Step 1	XXX,XXX,XXX [A]
2	Subtract: All Amounts Related to Foreign Entities	Step 2	(XX,XXX,XXX)
3	U.S. ASC 730 Financial Statement R&D		XXX,XXX,XXX [B]
3a	The Schedule M-3 amount (see instructions)	XXX,XXX,XXX	
4	Subtractions from U.S. ASC 730 Financial Statement R&D	Step 3	
5	All U.S. ASC 730 Financial Statement R&D GL Accounts or items specifically excluded from Sec. 174 such as (i) Quality Control Testing; (ii) efficiency surveys; (iii) management studies; (iv) consumer surveys; (v) advertising; (vi) the acquisition of another's Patent, model, production or process; and (vii) research in connection with literary, historical or similar projects.	XX,XXX	
6	All U.S. ASC 730 Financial Statement R&D GL Accounts that are non-Wage, non-Supply and non-Contract Research such as depreciation, amortization, shipping, travel, training, rent, overhead, general and administrative expenses and all other items not eligible for section 41 QREs.	XX,XXX	
7	All U.S. ASC 730 Financial Statement R&D costs incurred for all agreements/contracts pursuant to which Taxpayer performed ASC 730 research in order to comply with the terms of the agreements/contracts. These costs are to be subtracted regardless of whether incurred in connection with Funded Research.	XX,XXX	
8	All U.S. ASC 730 Financial Statement R&D costs incurred for all persons other than Taxpayer's employees who performed ASC 730 research on behalf of Taxpayer.	XX,XXX	
9	All U.S. ASC 730 Financial Statement R&D In-house Research performed outside the US.	XX,XXX	
10	All Prototype Overhead expenses, patent costs and severance pay included in U.S. ASC 730 Financial Statement R&D.	XX,XXX	
11	TOTAL SUBTRACTIONS STEP 3		(XXX,XXX) [C]
11a	Subtotal U.S. ASC 730 Financial Statement R&D After Subtractions	B - C = D	XXX,XXX,XXX [D]
12	U.S. ASC 730 Financial Statement R&D Employee Wage Adjustment	Step 4	
	W-2 Wages for employee compensation added to U.S. ASC 730 Financial Statement R&D in this Step should NOT include any amounts relating to the above subtractions. Further, the W-2 wages should only relate to Wage costs that are charged to U.S. ASC 730 Financial Statement Cost Centers.		
13	Subtract U.S. ASC 730 Financial Statement R&D Wage and Wage Related Accounts not already subtracted in the lines, above.	(XX,XXX)	
14	Subtract U.S. ASC 730 Financial Statement R&D Stock-Based Compensation not already subtracted in the lines, above.	(XX,XXX)	
	Amounts on lines 15, 16 & 17 are calculated using Appendix D - Adjusted ASC 730 Financial Statement R&D Wage Detail		
15	Add 95% of W-2 Wages for Qualified Individual Contributors.	XXX,XXX,XXX	
16	Add 95% of W-2 Wages for 1st Level Supervisor Managers.	XXX,XXX,XXX	
17	Add Upper Level Managers' Limit	X,XXX,XXX	
18	TOTAL STEP 4		XX,XXX [E]
19	ADJUSTED ASC 730 Financial Statement R&D	D + E = F	XXX,XXX,XXX [F]
QRE AMOUNTS Step 5 (cont.)			
ADJUSTED ASC 730 Financial Statement R&D: (Transfer these numbers to Appendix B Form 6765 "Adjusted ASC 730 Financial Stmt. R&D" Column)			
20	Wages for qualified services (Form 6765 Line 5 or 24)		XXX,XXX,XXX
21	Cost of supplies (Form 6765 Line 6 or 25)		XX,XXX,XXX
22	Rental or lease costs of computers (Form 6765 Line 7 or 26)		XX,XXX,XXX
ADJUSTED ASC 730 Financial Statement R&D QRE AMOUNTS (Form 6765 Line 9 or 28) This amount should equal [F] above			XXX,XXX,XXX

Instructions for Appendix C (2017)

Exhibit 4.30.2-17 (Cont. 1) (02-24-2025)**ASC 730 (2017) Appendix C: Computation of Adjusted ASC 730 Financial Statement R&D****Step 1:**

Line 1 Report the amount of research and development costs currently expensed pursuant to ASC 730 for U.S. GAAP purposes which amount is shown as a line item on taxpayer's income statement included in its certified audited financial statements or which amount is shown separately stated in a note to its certified audited financial statements for the same year/period as the tax return.

Step 2:

Line 2 Subtract all Book/GAAP ASC 730 R&D amounts for any foreign entities, i.e. non- U.S. entities such as controlled foreign corporations.

Line 3 Line 1 - line 2, this figure should include GAAP R&D ASC 730 expenses for only U.S. entities.

Line 3a The figure reported here should be the same amount as reported on: Form 1120, Sch. M-3, Part III, column (a), line 35; Form 1120S, Sch. M-3, Part III, column (a), line 29; or Form 1065, Sch. M-3, Part III, column (a), line 29 (collectively the "Schedule M3 amount"). Provide an explanation, if the Schedule M-3 amount is different than the amount on Line 3.

Step 3: Line 4 Subtractions from U.S. ASC 730 Financial Statement R&D.

Line 5 All U.S. ASC 730 Financial Statement R&D GL accounts specifically excluded from section 174 such as: (i) quality control testing; (ii) efficiency surveys; (iii) management studies; (iv) consumer surveys; (v) advertising of promotions; (vi) the acquisition of another's patent, model, production or process; or (vii) research in connection with literary, historical, or similar projects.

Line 6 All U.S. ASC 730 Financial Statement R&D GL accounts that are non-wage, non-supply and non-contract research such as depreciation, amortization, shipping, travel, training, rent, overhead, general and administrative expenses and all other items not eligible for section 41 QREs.

Line 7 All U.S. ASC 730 Financial Statement R&D costs incurred for all agreements/contracts pursuant to which the taxpayer performed ASC 730 research in order to comply with the terms of the agreements/contracts. These costs are to be subtracted regardless of whether incurred in connection with funded research.

Line 8 All U.S. ASC 730 Financial Statement R&D costs incurred for all persons other than the taxpayer's employees who performed ASC 730 research on behalf of the taxpayer.

Line 9 All wages and related expenses for U.S. ASC 730 Financial Statement R&D for U.S. employees who leave the U.S. and perform research services outside of the U.S. Also, the wages and stock options associated with these individuals for ASC 730 research performed outside the U.S. should not be included on lines 13 & 14, below. A similar adjustment for non-inclusion of ASC 730 research performed outside the U.S. is also required to be made to taxable W-2 wages captured on lines 15, 16 & 17, below.

Line 10 The amount of prototype overhead, patent costs and severance pay included in U.S. ASC 730 Financial Statement R&D.

Line 11 Total subtractions step 3, (add lines 5 through 10).

Line 11a Subtotal U.S. ASC 730 Financial Statement R&D after subtractions (Line 3 - Line 11)

Step 4: *Line 12* W-2 Wages for employee compensation added to U.S. ASC 730 Financial Statement R&D in this step should not include any amounts relating to the above subtractions. Further, the W-2 wages should only relate to wage costs that are charged to U.S. ASC 730 Financial Statement cost centers.

Exhibit 4.30.2-17 (Cont. 2) (02-24-2025)**ASC 730 (2017) Appendix C: Computation of Adjusted ASC 730 Financial Statement R&D**

Line 13 Subtract U.S. ASC 730 Financial Statement R&D wage and wage related accounts not already subtracted in the lines, above.

Line 14 Subtract U.S. ASC 730 Financial Statement R&D stock-based compensation not already subtracted in the lines, above.

Note: Amounts on lines 15, 16 & 17 are calculated using Appendix D - Adjusted ASC 730 Financial Statement R&D Wage Detail. These wages represent taxable W-2 wages (base wages and stock options) for employees whose wage costs are charged to U.S. ASC 730 Financial Statement cost centers

Line 15 Add 95% of W-2 wages for qualified individual contributors.

Line 16 Add 95% of W-2 wages for 1st level supervisor managers.

Line 17 Add upper level managers' limit.

Line 18 Total step 4

Step 5: *Line 19* Adjusted ASC 730 Financial Statement R&D (line 11a + line 18)

Note: for lines 20 through 22, breakdown the amount of QREs reported on line 19 to the appropriate lines on Form 6765. Record these costs in Appendix B - column headed "Adjusted ASC 730 Financial Statement R&D."

Line 20 Wages for qualified services (Form 6765 line 5 or 24)

Line 21 Cost of supplies (Form 6765 line 6 or 25)

Line 22 Rental or lease costs of computers (Form 6765 line 7 or 26)

The total of lines 20 through 22, Adjusted ASC 730 Financial Statement R&D QRE amounts (Form 6765 line 9 or 28). This amount should equal line 19 above.

Exhibit 4.30.2-18 (02-24-2025)

ASC 730 (2020) Appendix C: Computation of Adjusted ASC 730 Financial Statement R&D

Appendix C – Computation of Adjusted ASC 730 Financial Statement R&D

Line #		Year
1	Financial Statement R&D	
1a	Subtract: All amounts related to foreign entities	XXX,XXX,XXX [A]
1b	Subtract: All amounts related to U.S. entities that are not included in taxpayer's consolidated federal income tax return	(XX,XXX,XXX)
2	U.S. Financial Statement R&D (Line 1 minus Line 1a and 1b)	XXX,XXX,XXX
2a	The Schedule M-3 amount (see instructions for Line 2a)	XXX,XXX,XXX
3	Adjustments to U.S. Financial Statement R&D	
3a	Subtract: Expenses for Software not for sale, lease, or otherwise marketed	XXX,XXX
3b	Subtract: Expenses identified under ASC 730-10-55-2 or other Non ASC 730 Expenditures	XXX,XXX
4	U.S. ASC 730 Financial Statement R&D (Line 2 minus Line 3a and Line 3b)	XXX,XXX,XXX [B]
	Subtractions from U.S. ASC 730 Financial Statement R&D	
5	All U.S. ASC 730 Financial Statement R&D GL Accounts or items specifically excluded from section 174, including but not limited to (i) Quality Control Testing; (ii) efficiency surveys; (iii) management studies; (iv) consumer surveys; (v) advertising or promotions; (vi) the acquisition of another's Patent, model, production or process; and (vii) research in connection with literary, historical or similar projects.	XX,XXX
6	All U.S. ASC 730 Financial Statement R&D GL Accounts and expenditures such as, depreciation, amortization, shipping, travel, training, rent, overhead, general and administrative expenses and all other items not eligible for section 41 QREs.	XX,XXX
7	All U.S. ASC 730 Financial Statement R&D costs incurred for all agreements/contracts pursuant to which the taxpayer performed ASC 730 research in order to comply with the terms of the agreements/contracts. These costs are to be subtracted regardless of whether incurred in connection with Funded Research.	XX,XXX
8	All U.S. ASC 730 Financial Statement R&D costs incurred for all persons other than the taxpayer's employees who performed ASC 730 research on behalf of the taxpayer.	XX,XXX
9	All U.S. ASC 730 Financial Statement R&D In-house Research performed outside the U.S.	XX,XXX
10	All Prototype Overhead expenses, patent costs and severance pay included in U.S. ASC 730 Financial Statement R&D.	XX,XXX
11	TOTAL SUBTRACTIONS STEP 3 (Total of Lines 5 through 10)	(XXX,XXX)[C]
11a	Subtotal U.S. ASC 730 Financial Statement R&D After Subtractions B - C = D	XXX,XXX,XXX [D]
12	U.S. ASC 730 Financial Statement R&D Employee Wage Adjustment	
	W-2 Wages for employee compensation added to U.S. ASC 730 Financial Statement R&D in this Step should NOT include any amounts relating to the above subtractions. Further, the W-2 Wages should only relate to Wage costs that are charged to U.S. ASC 730 Financial Statement Cost Centers.	
13	Subtract U.S. ASC 730 Financial Statement R&D Wage and Wage Related Accounts not already subtracted in the lines above.	(XX,XXX)
14	Subtract U.S. ASC 730 Financial Statement R&D Stock-Based Compensation not already subtracted in the lines above.	(XX,XXX)
	Amounts on Lines 15, 16 & 17 are calculated using Appendix D - Adjusted ASC 730 Financial Statement R&D Wage Detail.	
15	Add 95% of W-2 Wages for Qualified Individual Contributors.	XX,XXX
16	Add 95% of W-2 Wages for 1st Level Supervisor Managers.	XX,XXX
17	Add Upper Level Managers' Limit.	XX,XXX
18	TOTAL STEP 4 (Total of Lines 13 through 17)	XX,XXX [E]
19	ADJUSTED ASC 730 Financial Statement R&D D + E = F	XXX,XXX,XXX [F]
	ADJUSTED ASC 730 Financial Statement R&D: QRE AMOUNTS	
	(Transfer these numbers to Appendix B Form 6765 "Adjusted ASC 730 Financial Stmt. R&D" Column)	
20	Wages for qualified services (Form 6765 Line 5 or 24)	XXX,XXX,XXX
21	Cost of supplies (Form 6765 Line 6 or 25)	XX,XXX,XXX
22	Rental or lease costs of computers (Form 6765 Line 7 or 26)	XX,XXX,XXX
	ADJUSTED ASC 730 Financial Statement R&D QRE AMOUNTS (Form 6765 Line 9 or 28)	XXX,XXX,XXX
	This Amount should equal [F]	

Instructions for Appendix C - 2020

Exhibit 4.30.2-18 (Cont. 1) (02-24-2025)**ASC 730 (2020) Appendix C: Computation of Adjusted ASC 730 Financial Statement R&D****Step 1:** Financial Statement R&D amounts reduced by foreign R&D

Line 1 Report the amount of research and development costs currently expensed for U.S. GAAP purposes, which amount is shown as a line item on the taxpayer's income statement included in its Certified Audited Financial Statements or is separately stated in a note to its Certified Audited Financial Statements for the same year/period as the tax return.

Line 1a Subtract all Book/GAAP R&D amounts for any foreign entities, i.e. non-U.S. entities such as Controlled Foreign Corporations.

Line 1b Subtract all the Book/GAAP R&D amounts for any U.S. entities not included in the taxpayer's consolidated U.S. Federal Income Tax return.

Line 2 Subtract Line 1a and 1b from Line 1. This figure should include GAAP R&D expenses for only U.S. entities included in the taxpayer's consolidated U.S. Federal Income Tax return.

Line 2a The figure reported here should be the same amount as reported on: Form 1120, Sch. M-3, Part III, column (a), Line 35; Form 1120S, Sch. M-3, Part III, column (a), Line 29; or Form 1065, Sch. M-3, Part III, column (a), Line 29 (collectively the "Schedule M-3 amount"). Provide an explanation, if the Schedule M-3 amount is different than the amount on Line 2.

Step 2: *Line 3* Adjustments to U.S. Financial Statement R&D. Remove all GAAP internal use software and non ASC 730 expenditures reported in the Financial Statement R&D amount.

Line 3a For any software development activities performed and which costs are included in U.S. Financial Statement R&D, remove all software development costs for software that is not for sale, lease, or otherwise marketed by the taxpayer. Software sold to related parties or as part of a cost sharing arrangement for internal use is not software for sale, lease or otherwise marketed.

Line 3b Subtract any expenses identified under ASC 730-10-55-2 or any other Non ASC 730 expenditure that is included in the U.S. Financial Statement R&D. If these expenses are not included in the U.S. Financial Statement R&D, taxpayer must explain the methodology used to determine these expenses were not included in the taxpayer's Financial Statement R&D.

Line 4 Subtract Lines 3a and 3b from Line 3. This is the U.S. ASC 730 Financial Statement R&D amount.

Step 3: Subtractions (not previously adjusted in steps 1 & 2 above) from U.S. ASC 730 Financial Statement R&D

Line 5 All U.S. ASC 730 Financial Statement R&D GL accounts or items specifically excluded from section 174 including but are not limited to (i) Quality Control Testing; (ii) efficiency surveys; (iii) management studies; (iv) consumer surveys; (v) advertising or promotions; (vi) the acquisition of another's patent, model, production or process; or (vii) research in connection with literary, historical, or similar projects.

Line 6 All U.S. ASC 730 Financial Statement R&D GL accounts and expenditures such as depreciation, amortization, shipping, travel, training, rent, overhead, general and administrative expenses and all other items not eligible for section 41 QREs.

Line 7 All U.S. ASC 730 Financial Statement R&D costs incurred for all agreements/contracts pursuant to which the taxpayer performed ASC 730 research in order to comply with the terms of the agreements/contracts. These costs are to be subtracted regardless of whether incurred in connection with funded research.

Line 8 All U.S. ASC 730 Financial Statement R&D costs incurred for all persons other than the taxpayer's employees who performed ASC 730 research on behalf of the taxpayer.

Exhibit 4.30.2-18 (Cont. 2) (02-24-2025)**ASC 730 (2020) Appendix C: Computation of Adjusted ASC 730 Financial Statement R&D**

Line 9 All wages and related expenses for U.S. ASC 730 Financial Statement R&D for U.S. employees who leave the U.S. and perform research services outside of the U.S. Also, the wages and stock options associated with these individuals for ASC 730 research performed outside the U.S. should not be included on Lines 13 & 14, below. A similar adjustment for non-inclusion of ASC 730 research performed outside the U.S. is also required to be made to taxable W-2 wages captured on Lines 15, 16 & 17, below.

Line 10 The amount of prototype overhead, patent costs and severance pay included in U.S. ASC 730 Financial Statement R&D.

Line 11 Total subtractions step 3 (total of lines 5 through 10).

Line 11a Subtract Line 11 from Line 3. This is the U.S. ASC 730 Financial Statement R&D after subtractions subtotal.

Step 4: *Line 12* U.S. ASC 730 Financial Statement R&D wage adjustment. W-2 Wages for employee compensation added to U.S. ASC 730 Financial Statement R&D in this step should not include any amounts relating to the above subtractions. Further, the W-2 wages should only relate to wage costs that are charged to U.S. ASC 730 Financial Statement cost centers.

Line 13 Subtract U.S. ASC 730 Financial Statement R&D wage and wage related accounts not already subtracted in the lines above.

Line 14 Subtracts U.S. ASC 730 Financial Statement R&D stock-based compensation not already subtracted in the lines above.

For lines 15 - 17, complete appendix D - ASC 730 Financial Statement R&D wage detail. These wages represent taxable W-2 wages (base wages and stock options) for employees whose wage costs are charged to U.S. ASC 730 Financial Statement cost centers.

Line 15 Add 95% of W-2 wages for qualified individual contributors.

Line 16 Add 95% of W-2 wages for 1st level supervisor managers.

Line 17 Add upper level managers' limit.

Line 18 Total Step 4. Total of Lines 13 through 17.

Step 5: *Line 19* Add Lines 11 and 18. This is the Adjusted ASC 730 Financial Statement R&D amount.

For lines 20 - 22, breakdown the amount of QREs reported on line 19 to the appropriate lines on the Form 6765. Record these costs in appendix B - column headed "Adjusted ASC 730 Financial Statement R&D".

Line 20 Wages for qualified services (Form 6765 line 5 or 24).

Line 21 Cost of supplies (Form 6765 line 6 or 25).

Line 22 Rental or lease costs of computers (Form 6765 Line 7 or 26).

The total of lines 20 through 22, Adjusted ASC 730 Financial Statement R&D QRE amounts (Form 6765 line 9 or 28). This amount should equal line 19 above.

Exhibit 4.30.2-19 (02-24-2025)**ASC 730 (2017 and 2020) Appendix D: Adjusted ASC 730 Financial Statement R&D Wage Detail
The Upper Level Managers' Limit for Employees Whose Wage Costs are Charged to U.S. ASC 730
Financial Statement Cost Centers:**

Line #	Description	Amount
1	95% of qualified individual contributors base W-2 wages	XXX,XXX,XXX
2	95% of qualified individual contributors – W-2 stock options	XXX,XXX,XXX
3	Total W-2 wages for qualified individual contributors (add lines 1 and 2)	XXX,XXX,XXX
4	95% of 1st level supervisor managers base W-2 wages	XX,XXX,XXX
5	95% of 1st Level supervisor managers – W-2 stock options	XXX,XXX,XXX
6	Total W-2 wages for 1st level supervisor managers (add lines 4 and 5)	XXX,XXX,XXX
7	The upper level managers' limit – The lesser of: (a) 10% of the sum of lines 3 and 6, above; or (b) 100% of the W-2 wage and W-2 stock option costs for upper level managers, which are charged to U.S. ASC 730 Financial Statement cost centers. If the taxpayer wants to include more than the upper level managers' limit in QREs, 100% of the W-2 wage and W-2 stock option costs for upper level managers is considered to be \$0.	X,XXX,XXX

Instructions for Appendix D - Adjusted ASC 730 Financial Statement R&D Wage Detail

Line 1 95% of the base W-2 wages for qualified individual contributors which wage costs are charged to U.S. ASC 730 Financial Statement cost centers.

Line 2 95% of the W-2 stock option wages for qualified individual contributors which wage costs are charged to U.S. ASC 730 Financial Statement cost centers.

Line 3 Total of lines 1 and 2.

Line 4 95% of the base W-2 wages for 1st level supervisor managers which wage costs are charged to U.S. ASC 730 Financial Statement cost centers.

Line 5 95% of the W-2 stock option wages for 1st level supervisor managers which wage costs are charged to U.S. ASC 730 Financial Statement cost centers.

Line 6 Total of lines 4 and 5

Line 7 The upper level managers' limit is the lesser of: (a) 10% of the sum of lines 3 and 6, above; or (b) 100% of the W-2 wage and W-2 stock option costs for upper level managers, which are charged to U.S. ASC 730 Financial Statement cost centers. If the taxpayer wants to include more than the upper level managers' limit in QREs, 100% of the W-2 wage and W-2 stock option costs for upper level managers is considered to be \$0 and any amount claimed for upper level managers will be subject to risk analysis and examination.

Exhibit 4.30.2-20 (02-24-2025)**ASC 730 (2017) Appendix E: Definitions**

The following terms and definitions apply solely for the purposes of the directive issued in 2017:

Term	Definition
Adjusted ASC 730 Financial Statement R&D	ASC 730 Financial Statement R&D adjusted pursuant to the methodology shown in Appendix C to this directive and the definitions contained in this Appendix E.
ASC 730	The FASB Accounting Standards Codification ("ASC") is the source of authoritative GAAP recognized by the FASB to be applied to non-governmental entities. ASC 730 establishes standards of financial accounting and reporting for research and development costs. It specifies: <ol style="list-style-type: none"> those activities that shall be identified as research and development for financial accounting and reporting purposes the elements of costs that shall be identified with research and development activities the accounting for research and development costs and the financial statement disclosures related to research and development costs
ASC 730 Financial Statement R&D	Research and development costs currently expensed pursuant to ASC 730 for U.S. GAAP purposes and the amount expensed is shown as a line item on a taxpayer's income statement included in its Certified Audited Financial Statements or the amount expensed is shown separately stated in a note to its Certified Audited Financial Statements.
ASC 730 R&D GL Accounts	The GL Accounts which make up ASC 730 Financial Statement R&D.
Base W-2 Wages	"Wages" as defined by section 3401(a) not including taxable stock options included in the W-2 Box 1 wages.

Exhibit 4.30.2-20 (Cont. 1) (02-24-2025)
ASC 730 (2017) Appendix E: Definitions

Term	Definition
Certified Audited Financial Statement	<p>A financial statement that is accompanied by the report of an independent (as defined in the American Institute of Certified Public Accountants Professional Standards, Code of Professional Conduct, Rule 101 and its interpretations and rulings) Certified Public Accountant. A financial statement is “certified audited” for purposes of this Directive if it is:</p> <ol style="list-style-type: none"> Certified to be fairly presented (an unqualified or clean opinion) Subject to a qualified opinion that such financial statement is fairly presented subject to a concern about a contingency (a qualified subject to opinion) other than a concern relating to ASC 730 reporting Subject to a qualified opinion that such financial statement is fairly presented, except for a method of accounting with which the accountant disagrees (a qualified except for opinion) where such disagreement does not relate to ASC 730 Subject to an adverse opinion not relating to ASC 730, but only if the accountant discloses the amount of the disagreement with the statement <p>Any other statement or report, such as a review statement or a compilation report that is not subject to a full audit is not a certified audited statement.</p>
Chart of Accounts	A listing of the names of the accounts that a company has identified and made available for recording transactions in its general ledger.
Contract Research	<p>Any expense paid or incurred in carrying on a trade or business to any person other than an employee of taxpayer for the performance on behalf of taxpayer of:</p> <ol style="list-style-type: none"> Qualified research as defined in IRC 1.41–4 or 1.41–4A, whichever is applicable, or Services which, if performed by employees of taxpayer, would constitute qualified services within the meaning of IRC 41(b)(2)(B).
Credit Year	The taxable year for which the research credit is being determined.
Financial Statement	A financial statement that is prepared in accordance with U.S. GAAP; that is given to creditors for purposes of making lending decisions, given to equity holders for purposes of evaluating their investment in the taxpayer, or provided for other substantial non-tax purposes; and that the taxpayer reasonably anticipates will be directly relied on for the purposes for which it was given or provided.
Foreign Entity	Any entity which is not a U.S. person.

Exhibit 4.30.2-20 (Cont. 2) (02-24-2025)
ASC 730 (2017) Appendix E: Definitions

Term	Definition
Funded Research	Research to the extent it is funded by any grant, contract, or otherwise by another person (including any governmental entity) where amounts payable to taxpayer are not contingent upon the success of the research and taxpayer does not retain a substantial right in the research. See IRC 1.41-4A(d).
GL Accounts	The master set of general ledger accounts that summarize all transactions occurring within an entity. The general ledger is comprised of all the individual accounts needed to record the assets, liabilities, equity, revenue, expense, gain, and loss transactions of a business.
Person	An individual, a trust, estate, partnership, association, company or corporation.
Prototype (also Pilot Model)	Any representation or model of a product that is produced to evaluate and resolve uncertainty concerning the product during the development or improvement of the product. The term includes a fully-functional representation or model of the product or a component of the product. See IRC 1.174-2(a)(4).
Prototype Overhead	All costs other than direct labor and direct materials allocated to a Prototype.
Qualified Individual Contributors	Employees of taxpayer who do not manage any taxpayer employees and whose wages are charged to U.S. ASC 730 Financial Statement Cost Centers.
Quality Control Testing	Testing or inspection to determine whether particular units of materials or products conform to specified parameters. However, Quality Control Testing does not include testing to determine if the design of the product is appropriate.
Rental and Lease Costs of Computers	The amount paid or incurred to another person for the right to use (time-sharing) computers in the conduct of qualified research. The computer must be owned and operated by someone other than taxpayer, located off taxpayer's premises, and taxpayer must not be the primary user of the computer. See IRC 1.41-2(b)(4).
Supplies	Any tangible property other than: <ul style="list-style-type: none"> a. land or improvements to land b. property of a character subject to the allowance for depreciation. See IRC 1.41-2(b)(1) & (2).
Taxpayer	Person electing to follow this guidance.
Upper Level Managers	Managers that directly supervise any employee other than Qualified Individual Contributors and whose wages are charged to U.S. ASC 730 Financial Statement Cost Centers. For example, a manager that directly supervises a 1st Level Supervisor Manager and/or another Upper Level Manager is an Upper Level Manager. Also a manager that supervises another manager and directly supervises Qualified Individual Contributors is an Upper Level Manager.

Exhibit 4.30.2-20 (Cont. 3) (02-24-2025)
ASC 730 (2017) Appendix E: Definitions

Term	Definition
U.S.	The United States, the Commonwealth of Puerto Rico, or any possession of the United States.
U.S. ASC 730 Financial Statement Cost Centers	Organizational units (e.g. business units, departments, cost centers) where the costs paid or incurred by those units are charged to U.S. ASC 730 Financial Statement R&D GL Accounts.
U.S. ASC 730 Financial Statement R&D	ASC 730 Financial Statement R&D adjusted by removal of all ASC 730 GL Accounts relating to Foreign Entities.
U.S. ASC 730 Financial Statement R&D GL Accounts	GL Accounts which make up U.S. ASC 730 Financial Statement R&D.
U.S. ASC 730 Financial Statement R&D In-House Research	U.S. ASC 730 Financial Statement R&D adjusted by removal of Contract Research.
U.S. ASC 730 Financial Statement R&D Stock Based Compensation	U.S. GAAP stock based compensation included in U.S. ASC 730 Financial Statement R&D.
U.S. ASC 730 Financial Statement R&D Wage and Wage Related Accounts	U.S. GAAP Wage and Wage related accounts included in U.S. ASC 730 Financial Statement R&D and that are not U.S. ASC 730 Financial Statement R&D Stock Based Compensation.
U.S. GAAP	U.S. Generally Accepted Accounting Principles, which are updated regularly to reflect the latest accounting methodologies, are the definitive source of accounting guidelines that companies rely on when preparing their financial statements. The standards are established and administered by the American Institute of Certified Public Accountants (AICPA) and the Financial Accounting Standards Board (FASB).
Wage	Compensation paid by taxpayer to an employee of taxpayer for services rendered by the employee to taxpayer.
W-2 Wages	Wages as defined by IRC 3401(a).
1st Level Supervisor Managers	Managers that directly manage only Qualified Individual Contributors and whose wages are charged to U.S. ASC 730 Financial Statement Cost Centers.

Exhibit 4.30.2-21 (02-24-2025)**ASC 730 (2020) Appendix E: Definitions**

The following terms and definitions apply solely for the purposes of the directive issued in 2020:

Term	Definition
1st Level Supervisor Managers	Managers that directly manage only Qualified Individual Contributors and whose wages are charged to U.S. ASC 730 Financial Statement Cost Centers.
Adjusted ASC 730 Financial Statement R&D	Financial Statement R&D adjusted pursuant to the methodology shown in Appendix C to this Directive and the definitions contained in this Appendix E.
ASC 730	<p>The FASB Accounting Standards Codification ("ASC") is the source of authoritative GAAP recognized by the FASB to be applied to non-governmental entities. ASC 730 establishes standards of financial accounting and reporting for research and development costs. It specifies:</p> <ul style="list-style-type: none"> a. those activities that shall be identified as research and development for financial accounting and reporting purposes b. the elements of costs that shall be identified with research and development activities c. the accounting for research and development costs and d. the financial statement disclosures related to research and development costs
Base W-2 Wages	"Wages" as defined by section 3401(a) not including taxable stock options included in the W-2 Box 1 wages.
Certified Audited Financial Statement	<p>A financial statement that is accompanied by the report of an independent (as defined in the American Institute of Certified Public Accountants Professional Standards, Code of Professional Conduct, Rule 101 and its interpretations and rulings) Certified Public Accountant. A financial statement is "certified audited" for purposes of this Directive if it is:</p> <ul style="list-style-type: none"> a. Certified to be fairly presented (an unqualified or clean opinion) b. Subject to a qualified opinion that such financial statement is fairly presented subject to a concern about a contingency (a qualified subject to opinion) other than a concern relating to ASC 730 reporting c. Subject to a qualified opinion that such financial statement is fairly presented, except for a method of accounting with which the accountant disagrees (a qualified except for opinion) where such disagreement does not relate to ASC 730 or d. Subject to an adverse opinion not relating to ASC 730, but only if the accountant discloses the amount of the disagreement with the statement <p>Any other statement or report, such as a review statement or a compilation report that is not subject to a full audit is not a certified audited statement.</p>

Exhibit 4.30.2-21 (Cont. 1) (02-24-2025)
ASC 730 (2020) Appendix E: Definitions

Term	Definition
Chart of Accounts	A listing of the names of the accounts that a company has identified and made available for recording transactions in its general ledger.
Contract Research	Any expense paid or incurred in carrying on a trade or business to any person other than an employee of taxpayer for the performance on behalf of taxpayer of: <ol style="list-style-type: none"> Qualified research as defined in IRC 1.41-4 or 1.41-4A, whichever is applicable Services which, if performed by employees of taxpayer, would constitute qualified services within the meaning of IRC 41(b)(2)(B).
Credit Year	The taxable year for which the research credit is being determined.
Financial Statement	A financial statement that is prepared in accordance with U.S. GAAP; that is given to creditors for purposes of making lending decisions, given to equity holders for purposes of evaluating their investment in the taxpayer, or provided for other substantial non-tax purposes; and that the taxpayer reasonably anticipates will be directly relied on for the purposes for which it was given or provided.
Financial Statement R&D	Research and development costs currently expensed for U.S. GAAP purposes and shown as a line item on the taxpayer's Certified Audited Financial Statements' income statement or separately stated in a note to its Certified Audited Financial Statements.
Foreign Entity	Any entity which is not a U.S. person.
Funded Research	Research to the extent it is funded by any grant, contract, or otherwise by another person (including any governmental entity) where amounts payable to taxpayer are not contingent upon the success of the research and taxpayer does not retain a substantial right in the research. See IRC 1.41-4A(d).
GL Accounts	The master set of general ledger accounts that summarize all transactions occurring within an entity. The general ledger is comprised of all the individual accounts needed to record the assets, liabilities, equity, revenue, expense, gain, and loss transactions of a business.
Person	An individual, a trust, estate, partnership, association, company or corporation.
Prototype (also Pilot Model)	Any representation or model of a product that is produced to evaluate and resolve uncertainty concerning the product during the development or improvement of the product. The term includes a fully-functional representation or model of the product or a component of the product. See IRC 1.174-2(a)(4).
Prototype Overhead	All costs other than direct labor and direct materials allocated to a Prototype.

Exhibit 4.30.2-21 (Cont. 2) (02-24-2025)
ASC 730 (2020) Appendix E: Definitions

Term	Definition
Qualified Individual Contributors	Employees of taxpayer who do not manage any taxpayer employees and whose wages are charged to U.S. ASC 730 Financial Statement Cost Centers.
Quality Control Testing	Testing or inspection to determine whether particular units of materials or products conform to specified parameters. However, Quality Control Testing does not include testing to determine if the design of the product is appropriate. See Treas. Reg. 1.174-2(a)(7).
R&D GL Accounts	The GL Accounts which make up Financial Statement R&D.
Rental and Lease Costs of Computers	The amount paid or incurred to another person for the right to use (time-sharing) computers in the conduct of qualified research. The computer must be owned and operated by someone other than taxpayer, located off taxpayer's premises, and taxpayer must not be the primary user of the computer. See IRC 1.41-2(b)(4).
Supplies	Any tangible property other than: <ul style="list-style-type: none"> a. land or improvements to land b. property of a character subject to the allowance for depreciation. See IRC 1.41-2(b)(1) & (2).
Taxpayer	Person electing to follow this guidance.
Upper Level Managers	Managers that directly supervise any employee other than Qualified Individual Contributors and whose wages are charged to U.S. ASC 730 Financial Statement Cost Centers. For example, a manager that directly supervises a 1st Level Supervisor Manager and/or another Upper Level Manager is an Upper Level Manager. Also a manager that supervises another manager and directly supervises Qualified Individual Contributors is an Upper Level Manager.
U.S.	The United States, the Commonwealth of Puerto Rico, or any possession of the United States.
U.S. ASC 730 Financial Statement Cost Centers	Organizational units (e.g. business units, departments, cost centers) where the costs paid or incurred by those units are charged to U.S. ASC 730 Financial Statement R&D GL Accounts.
U.S. ASC 730 Financial Statement R&D	ASC 730 Financial Statement R&D adjusted by removal of all expenses for software development activities paid or incurred in the development of software not for sale, lease, or otherwise marketed and for expenses incurred in activities listed in ASC 730-10-55-2 and other non-ASC 730 expenses.
U.S. ASC 730 Financial Statement R&D GL Accounts	GL Accounts which make up U.S. ASC 730 Financial Statement R&D.
U.S. ASC 730 Financial Statement R&D In-House Research	U.S. ASC 730 Financial Statement R&D adjusted by removal of Contract Research.

Exhibit 4.30.2-21 (Cont. 3) (02-24-2025)**ASC 730 (2020) Appendix E: Definitions**

Term	Definition
U.S. ASC 730 Financial Statement R&D Stock Based Compensation	U.S. GAAP stock based compensation included in U.S. ASC 730 Financial Statement R&D.
U.S. ASC 730 Financial Statement R&D Wage and Wage Related Accounts	U.S. GAAP Wage and Wage related accounts included in U.S. ASC 730 Financial Statement R&D and that are not U.S. ASC 730 Financial Statement R&D Stock Based Compensation.
U.S. Financial Statement R&D	Financial Statement R&D adjusted by removal of all R&D GL Accounts relating to Foreign Entities.
U.S. Financial Statement R&D GL Accounts	GL Accounts which make up U.S. Financial Statement R&D.
U.S. GAAP	U.S. Generally Accepted Accounting Principles, which are updated regularly to reflect the latest accounting methodologies, are the definitive source of accounting guidelines that companies rely on when preparing their financial statements. The standards are established and administered by the American Institute of Certified Public Accountants (AICPA) and the Financial Accounting Standards Board (FASB).
Wage	Compensation paid by taxpayer to an employee of taxpayer for services rendered by the employee to taxpayer.
W-2 Wages	"Wages" as defined by IRC 3401(a).

Exhibit 4.30.2-22 (02-24-2025)**Valuation of Single Identifiable Property for Timber Casualty Losses****ISSUE**

What are the legal requirements for valuing timber property that is damaged or destroyed by casualty, for purposes of claiming a casualty loss under IRC 165(a)?

BACKGROUND

Under IRC 165(a) a deduction is allowed for any loss sustained during the taxable year. Business casualty losses are determined by reference to the single, identifiable property damaged or destroyed. Treas. Reg. 1.165-7(b) (2). For timber property the SIP is generally the depletion block. See Revenue Ruling 99-56, 1999-51 IRB 676. Once the SIP is identified, the casualty loss is determined by reference to that specific property unit. The amount deductible is the lesser of the diminution in fair market value of the SIP or its adjusted basis. Treas. Reg. 1.165-7(b) (2). This generally requires that the fair market value of the SIP (block) be ascertained by competent appraisal, immediately before and after the casualty. Treas. Reg. 1.165-7(a) (2).

The major problem in this area arises when taxpayers, contrary to the regulations, do not perform an appraisal of the SIP (i.e., depletion block) before and after the casualty. Instead, these taxpayers seek to extrapolate the loss in value from per-unit FMVs, multiplying that figure by the number of units lost or damaged. In essence, this method consists of determining the volume of lost timber and multiplying that volume by the market price per applicable unit (cord, thousand board feet ("MBF"), etc.). This fragmented, additive approach is sometimes called the gross timber value and does not reflect the reduction in value of the SIP as a unitary whole. In other words, it does not follow that the loss of a specific volume of merchantable timber, whose value is often readily known, necessarily reduces the value of the larger block by the same amount. In some situations, where the loss area is relatively small and the block size is very large, the loss may not reduce the value of the depletion block at all.

This additive approach does not work because larger timber properties often sell at a substantial discount, (reflecting a wholesale price,) compared to their gross retail timber value. Hancock Timber Resource Group 1999. "Analysis of Timberland Transactions Reveals Size Discount." In 1-6 **Hancock Timberland Investor**. Third Quarter; Hancock Timber Resource Group 2000. "Taking Advantage of the Wholesale Discount for Large Timberland Transactions." February 2000, R-00-1. These studies associate larger discounts with properties that have larger volumes and acreages. For example, a Western sale of 250,000 MBF on 25,000 acres yielded an average discount of 35%, while a sale of 2,000,000 MBF on 200,000 acres yielded an average discount of 48%.

The literature suggests several reasons for the relationship between property size and discounts. The wholesale value typically reflects a price discount, which recognizes that merchantable volume may be too large to cut and market in the immediate future. Even if it were physically and legally possible to harvest all the timber immediately, however, complete liquidation might depress local prices by producing a market glut. Moreover, some of the merchantable timber may be in stands that currently contain too little volume to be economically operable, is too expensive to access, or is in inaccessible riparian zones or buffer areas. The timber harvest must be deferred until later, in some cases indefinitely, so the time value of money is relevant. As the time to harvest increases, risk also increases, because of the volatility in timber prices and future market conditions. Additionally, larger properties attract longer-term investors, who desire sustained yield, not short-term liquidation.

Another factor that tends to diminish liquidity of larger tracts is that the pool of potential buyers declines as the property size increases. Very large timber properties require buyers to have access to large amounts of capital. The lack of potential buyers tends to put downward pressure on the prices of these parcels.

LAW & ARGUMENT

Treas. Reg. 1.165-1(C) provides that the amount of loss allowable as a deduction under Section 165(a) shall not exceed the amount prescribed by Treas. Reg. 1.1011-1 as the adjusted basis for determining the loss from the sale or other disposition of the property involved.

Exhibit 4.30.2-22 (Cont. 1) (02-24-2025)**Valuation of Single Identifiable Property for Timber Casualty Losses**

When timber property is damaged or destroyed by a casualty event, the first step in determining the amount of the casualty loss is the identification of the single identifiable property (SIP).

Note: *International Paper Co. v. United States*, 36 Fed. Cl. 313, (1996); *Weyerhaeuser Co. v. United States*, 32 Fed. Cl. at 109.

In the case of timber casualty losses, the Court of Appeals for the Federal Circuit has declared that, as a matter of law, the SIP is the timber depletion block "when that property serves for commercial, forest management, and depletion purposes".

Note: *Weyerhaeuser Co. v. United States*, 92 F.3d 1148, 1151 (Fed. Cir. 1996); cert. denied, 117S. Ct. 776 (1997), aff'g in part and rev'g in part, 32 Fed. Cl. 80 (1994).

Once the SIP is identified, the casualty loss is determined by reference to that specific property unit. The amount deductible is the lesser of the diminution in fair market value (of the SIP) or the adjusted basis (of the SIP). Treas. Reg. 1.165-7(b)(2).

Under Treasury Reg. 1.165-7(a)(2), this generally requires that the fair market value of the SIP (block) be ascertained by competent appraisal, immediately before and immediately after the casualty, to determine the amount of the loss deductible.

This formula, including the requirement that the reduction in fair market value be determined with reference to the SIP, has been acknowledged by every Court that concluded that the SIP is the depletion block. As noted above, to determine the allowable loss, a court must take the difference between the fair market value of the SIP before and after the casualty. "No one denies that the 'single identifiable property damaged or destroyed' must be ascertained in order to delineate the casualty loss, the fair market values, the adjusted basis, and, ultimately, to determine the allowable deduction, if any." *Westvaco Corp. v. United States*, 639 F.2d 700, 708 (Ct.Cl. 1980) (citations omitted). See, *Weyerhaeuser Co. v. United States*, 39 Fed. Cl. 410, 411 (1997) ("[T]he court must determine plaintiff's allowable casualty loss deduction by reference to each of the depletion blocks affected... For each depletion block so affected, plaintiff's casualty loss deduction is limited to the lesser of (i) the diminution in the fair market value of the depletion block as a result of the casualty event, or (ii) the amount of the adjusted basis of the depletion block.")

Using the additive approach does not necessarily accurately reflect this difference. "[A]n aggregation of the value of destroyed units of merchantable timber, together with the value of the partial losses resulting from nonfatal injuries to merchantable trees, does not necessarily measure the reduction in fair market value of the property." *Westvaco*, 639F.2d at 707. In a similar case, the court of federal claims followed **Westvaco**. *International Paper Co. v. United States*, 39 Fed. Cl. 313 (1996). There, the IRS requested detailed information concerning timber damaged by a hurricane. Claiming that the parties that already agreed to the volumes and types of timber damaged, International Paper refused to provide the requested information. Holding that the IRS was entitled to the requested data, the court noted that, in order to value the loss, "[a]pparently, plaintiff seeks to extrapolate from per-unit FMVs, multiplying that figure by the number of units determined to be lost in each SIP." *Id.* at 319. This attempt to establish the amount of the loss prior to ascertaining the SIP was "somewhat backwards." *Id.*

In the one case that did accept the use of the additive method, the Court of Federal Claims noted the method's shortcomings. *Weyerhaeuser*. There, rather than valuing the entire SIP, *Weyerhaeuser* valued the tree stands the damaged timber was in. The Court of Federal Claims evaluated the evidence and found that the taxpayer's appraisal yielded a result that was substantially the same as if they had appraised the entire depletion block. But the court cautioned that, absent evidence that the additive approach was equivalent to the decrease in FMV of the SIP, this valuation method was not the best method. "To the contrary, prudence counsels a similarly-

Exhibit 4.30.2-22 (Cont. 2) (02-24-2025)**Valuation of Single Identifiable Property for Timber Casualty Losses**

situated taxpayer to eschew the fragmented, additive approach and establish its prima facie case by proving the diminution in the fair market value of the SIP, i.e., the timber depletion block viewed as a unitary property.” *Weyerhaeuser*, 39 Fed. Cl. at 412, n. 5 (citations omitted).

Once the SIP has been identified, it must be valued. Even after the unitary method has been selected, it’s still necessary to determine the fair market value using appropriate valuation methodologies.

Fair market value is traditionally defined as the price at which property would have changed hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. *United States v. Cartwright*, 411 U.S. 546, 551 (1973), see Treas. Reg. 1.611-1(d) (2). Valuation is based upon the market the property would be sold for in the ordinary course of business. *Anselmo v. Commissioner*, 757 F.2d 1208 (11th Cir. 1985) (valuing unmounted gems using a wholesale price, rather than the retail price when mounted); *Arbini v. Commissioner*, T.C. Memo. 2001- 141 (holding that the value of donated newspapers should be determined at the wholesale not retail level). The fair market value of real property is determined with reference to the property as a whole, not by reference to artificially created subdivisions. *Akers v. Commissioner*, 799 F.2d 243 (6th Cir.1986); *Pope & Talbot v. Commissioner*, T.C. Memo. 1997-116, 73 T.C.M. (CCH) 2229. This principle is best illustrated by *Akers*.

In *Akers*, the Sixth Circuit addressed the valuation of a conservation easement. The *Akers* contributed an easement on several properties they owned, including a 1,261 acre tract known as the Treanor Tract. The property next to the Treanor Tract had been subdivided into lots of a few acres. In their valuation, the *Akers* assumed that the Treanor Tract would be subdivided into twenty-four lots of approximately fifty acres. They then valued the various tracts using sales of comparable lots. The Service valued the Treanor Tract as a whole, focusing on comparable sales of tracts over 1,000 acres. To determine which method was appropriate the court looked at applicable definition of fair market value under IRC 170(c), which looked at “the price at which the property would change hands between a willing buyer and a willing seller.” *Id* at 245 (emphasis in original). This language “suggest[s] that the appropriate question is what a hypothetical Malcolm Forbes would have paid for [the Treanor Tract] as one tract, rather than what two dozen hypothetical yuppies would have paid for it as 24 [smaller tracts].” *Id*.

The Tax Court has applied the same principle to timber properties. In *Pope & Talbot v. Commissioner*, the court considered the valuation of 79,000 acres of timberland. *Pope & Talbot* valued the land as a block, while the IRS proposed subdividing the land into six smaller parcels. Rejecting the IRS’s valuation, the court held that subdivision was not appropriate because the market was depressed; *Pope & Talbot* would incur additional costs if the land was subdivided and the available evidence indicated that the most likely buyer was a large, industrial buyer that would purchase the entire tract. As a result, the court valued the property at a 39 percent discount to its gross timber value.

Thus, when valuing timber using a hypothetical sale, it’s important to focus on a realistic transaction. If the property or block being valued includes several distinct tracts that are noncontinuous and contain different types of timber, subdivision may be appropriate. See *Schapiro v. Commissioner*, T.C. Memo. 1991-128 (accepting valuation based on subdivision in a case where an easement was granted specifically to preclude subdivision of the property); *Symington v. Commissioner*, 87 T.C. 892, 898 (valuing property based on subdivision where there was a strong demand for small lots in the area). If a party suggests subdivision, however, “the taxpayer must establish that there existed a reasonable probability that the land would be so used in the reasonably near future.” *Stanley Works v. Commissioner*, 87 T.C.389, 401 (1986). Absent evidence that subdivision would be expected or reasonable the property should be valued as a whole. *Akers*, 799 F.2d at 245; *Pope & Talbot*, 73 T.C.M. at 2236. And if a property is valued based on subdividing it, an allowance must be made for the cost of subdivision including marketing costs and liquidation time. *Akers*, 799 F.2d at 246; *Symington*, 87 T.C. at 899.

CONCLUSION

Exhibit 4.30.2-22 (Cont. 3) (02-24-2025)**Valuation of Single Identifiable Property for Timber Casualty Losses**

Though there are no hard and fast rules for valuing timber casualty losses, some general guidance can be given. The appropriate SIP for a timber casualty is generally the depletion block. The loss is the difference between the FMV of the SIP before and after the casualty and generally cannot be based upon the retail value of the damaged timber. Moreover, the SIP must be valued as a single property or by using reasonable subdivisions.

