Internal Revenue
bulletin

Bulletin No. 2000–5
January 31, 2000

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 2000–5, page 436.

Application of section 368(a)(1)(A) to divisive mergers. This ruling holds that a state law merger will not qualify as a reorganization under section 368(a)(1)(A) of the Code if the merger does not result in one corporation acquiring the assets of a target corporation and the target corporation ceasing to exist.

T.D. 8859, page 429.

Final regulations under section 42 of the Code amend various low-income housing tax credit regulations including the procedures for compliance monitoring by the state and local housing agencies, the requirements for making carryover allocations, and the rules for the agencies' correction of administrative errors or omissions. In addition, the regulations require the independent verification of information on sources and uses of funds submitted by taxpayers to the agencies.

T.D. 8860, page 437.

Final regulations under section 988 of the Code relate to the treatment of income and expenses from certain hyperinflationary, nonfunctional currency transactions and certain notional principal contracts.

EXEMPT ORGANIZATIONS

T.D. 8861, page 441.

Final regulations under section 6104(d) of the Code relate to the disclosure requirements of private foundations.

ADMINISTRATIVE

REG–103831–99, page 452.

Proposed regulations under section 752 of the Code relate to the allocation of nonrecourse liabilities by a partnership. A public hearing is scheduled for May 3, 2000.

REG–111119–99, page 455.

Proposed regulations under section 708 of the Code clarify the tax consequences of partnership mergers and divisions. A public hearing is scheduled for May 4, 2000.

REG–116567–99, page 463.

Proposed regulations address when a currency will be considered hyperinflationary under section 988 of the Code. These regulations are intended to prevent distortions associated with the computation of income and ex-

(Continued on the next page)

Actions Relating to Court Decisions is on the page following the Introduction.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

penses arising from section 988 transactions denominated in hyperinflationary currencies. A public hearing is scheduled for May 17, 2000.

Rev. Proc. 2000–15, page 447.

Innocent spouse; equitable relief. Guidance is provided for taxpayers seeking relief from federal tax liability under section 6015(f) or 66(c) of the Code. Notice 98–61 modified and superseded.

Notice 2000–9, page 449.

Insurance companies; treatment of variable contracts, closing agreements. This notice reminds issuers of variable contracts that diversification rules for investments in U.S. Treasury securities by separate accounts are different for variable annuity contracts than for variable life insurance contracts. For a limited time, the notice permits issuers of variable annuity contracts that did not satisfy the diversification requirements under section 817(h) of the Code, but which would have satisfied the more lenient diversification requirements for variable life insurance contracts, to obtain a closing agreement through a reduced payment amount.

Notice 2000–10, page 451.

Guidance Priority List. Public comments are requested about items that should be included in the Guidance Priority List for 2000. All comments should be submitted by February 14, 2000.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

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

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

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

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

Actions Relating to Court Decisions

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, "acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, "acquiescence in result only" indicates disagreement or concern with some or all of those reasons. "Nonacquiescence" signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a "nonacquiescence" indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner ACQUIESCES in result only in the following decision:

McLeod v. United States,[1]

276 F. Supp. 213 (S.D. Ala. 1967)

[1] Acquiescence in result only relating to whether minor children, listed as exemptions on taxpayer's income tax return for 1964, were taxpayer's dependents within the meaning of I.R.C. section 152.

Section.—42 Low-Income Housing Credit

26 CFR 1.42–5: Monitoring compliance with low-income housing credit requirements.

T.D. 8859

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 602

Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the procedures for compliance monitoring by state and local housing agencies (Agencies) with the requirements of the low-income housing credit; the requirements for making carryover allocations; the rules for Agencies' correction of administrative errors or omissions; and the independent verification of information on sources and uses of funds submitted by taxpayers to Agencies. These final regulations affect owners of low-income housing projects who claim the credit and the Agencies who administer the credit.

DATES: *Effective Dates*: These regulations are effective January 1, 2001, except that the amendments made to §§1.42–5(c)(5) and (e)(3)(i), and 1.42–13 are effective January 14, 2000, and the amendment made to §1.42–6(d)(4)(ii) is effective January 1, 2000.

Applicability Dates: For dates of applicability of the amendments to §1.42–5, see §1.42–5(h). For date of applicability of the amendment made to §1.42–6, see §1.42–12(c). For date of applicability of the amendments made to §1.42–13, see §1.42–13(d). For date of applicability of §1.42–17, see §1.42–17(b).

FOR FURTHER INFORMATION CONTACT: Paul Handleman, (202) 622-3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545-1357. Responses to these collections of information are mandatory.

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

For §1.42–5, the estimated annual burden per respondent varies from .5 hour to 3 hours for taxpayers and 250 to 5,000 hours for Agencies, with an estimated average of 1 hour for taxpayers and 1,500 hours for Agencies. For §1.42–13, the estimated annual burden per respondent varies from .5 hour to 10 hours for taxpayers and Agencies, with an estimated average of 3.5 hours for taxpayers and 3 hours for Agencies. For §1.42–17, the estimated annual burden per respondent varies from .5 hour to 2 hours for taxpayers and .5 hour to 5 hours for Agencies, with an estimated average of 1 hour for taxpayers and 2 hours for Agencies.

Comments concerning the accuracy of these burden estimates and suggestions for reducing these burdens should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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

Background

On January 8, 1999, the IRS published proposed regulations (REG–114664–97, 1999–11 I.R.B. 21) in the **Federal Register** (64 FR 1143) inviting comments under section 42. A public hearing was held May 27, 1999. Numerous comments have been received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury Decision.

Public Comments

A. *Compliance Monitoring*

1. *Inspection Requirement for New Buildings.*

The proposed regulations require that, by the end of the calendar year following the year the last building in a project is placed in service, the Agency conduct on-site inspections of the projects and review the low-income certification, the documentation supporting such certification, and the rent record for each tenant in the project. Most commentators view the requirement for reviewing all tenant records for all buildings in a project as unnecessary and burdensome. Most commentators suggest limiting inspections for new buildings to 20 percent of the project's low-income units. Commentators also suggest extending the time limit for inspecting new buildings to the end of the calendar year following the first year of the credit period or at least until a reasonable time after the Agency issues Form 8609, "Low-Income Housing Credit Allocation Certification." This added flexibility would allow the Agency to combine a physical inspection with a file review of the first year of the credit period.

In response to the comments, the final regulations reduce the inspection burden for new buildings by requiring the Agency to conduct on-site inspections of all new buildings in the project and, for at least 20 percent of the project's low-income units, to inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units. To allow the Agency sufficient time to review the tenant files for the first year of the credit period, the final regulations extend the time limit for inspecting new buildings to the end of the second calendar year following the year the last building in the project is placed in service.

2. *Three-year Inspection Requirement.*

The proposed regulations require that,

at least once every 3 years, each Agency conduct on-site inspections of all buildings in each low-income housing project and, for each tenant in at least 20 percent of the project's low-income units selected by the Agency, review the low-income certification, the documentation supporting such certification, and the rent record.

Most commentators agree with requiring physical inspections of the buildings at least once every 3 years. However, commentators recommend reviewing tenant income and rent records once every 5 years, which is one of the options under the current compliance monitoring regulations (see §1.42–5(c)(2)(ii)(B) requiring an Agency to review tenant files for 20 percent of the low-income housing projects each year). Commentators also recommend reviewing tenant files either on-site or at other locations, including desk audits.

Although the physical inspection and file review requirements for new buildings are relaxed in the final regulations, the final regulations retain the 3-year inspection cycle for existing buildings. The final regulations do not separate the physical inspection and file review cycles (every 3 years for physical inspections and every 5 years for file reviews) as suggested by commentators because it is administratively complete to do both during the same year. The tenant income and rent restrictions in section 42(g) are equally important as the habitability standards for a low-income unit in section 42(i)(3)(B)(ii). The final regulations adopt the suggestion that the file review may be done wherever the tenant files are maintained.

3. *Health, Safety, and Building Code Inspections.*

The proposed regulations require the Agency to determine whether the project is suitable for occupancy, taking into account local health, safety, and building codes. Many commentators object to this requirement as too costly and unadministerable because building codes vary considerably within states. Commentators also asked for guidelines as to what constitutes an "inspection." Some commentators propose defining an inspection as looking at selected units in the building and common areas for visible problems or defects without applying the local health, safety, and building codes standards. One commentator suggests inspections based on a complaint from the local jurisdiction or from a tenant. Some commentators suggest using a uniform physical standard such as the uniform physical condition standards for public housing established by the Department of Housing and Urban Development (HUD) in 24 CFR 5.703.

Section 42(i)(3)(B)(i) excludes from the definition of a "low-income unit" a unit that is not suitable for occupancy. Under section 42(i)(3)(B)(ii), suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes. Recognizing that these codes vary considerably within states, the final regulations require an Agency to determine whether a low-income housing project satisfies these codes, or satisfies the HUD uniform physical condition standards. The HUD standards are intended to ensure that housing is decent, safe, sanitary, and in good repair. Though it would be appropriate that an Agency use HUD's inspection protocol under 24 CFR 5.705, the final regulations do not mandate use of HUD's inspection protocol because to do so could increase costs to the Agencies as well as limit their latitude in applying standards consistent with their own operating procedures and practices. The final regulations except a building from the inspection requirement if the building is financed by the Rural Housing Service (RHS) under the section 515 program, the RHS inspects the building (under 7 CFR part 1930(c)), and the RHS and Agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the Agency of the inspection results. Irrespective of the physical inspection standard selected by the Agency, a low-income housing project under section 42 must continue to satisfy local health, safety, and building codes.

The proposed regulations limit an Agency's delegation of the physical inspection of a project to only a state or local government unit responsible for making building code inspections. Commentators suggest expanding the delegation of inspections to professional firms. The final regulations remove the delegation limitation and Agencies may delegate the physical inspection requirement to state or local governmental agencies, HUD, or private contractors.

4. *Local Reports of Building Code Violations.*

The proposed regulations require the owner of a low-income housing project to certify that for the preceding 12-month period the state or local government unit responsible for making building code inspections didnot issue a report of a violation for the project. If the governmental unit issued a report of a violation, the owner is required to attach a copy of the report of the violation to the annual certification submitted to the Agency.

A commentator noted that the number of violations attached to the annual owner certification would be considerable because even the highest quality rental housing operations do not have an inspection without a report or notice of some violation. Two commentators suggest attaching reports only for violations that have not been corrected prior to filing the annual owner certification or requiring that owners only attach reports for "major" violations. The commentators suggest defining major violations as violations not corrected within 90 days of the notice of violation or violations where the cost to comply exceeds $2,500. A commentator suggests that Agencies be allowed to distinguish between minor technical violations and serious violations (i.e., lack of heat or hot water, hazardous conditions, and security) in reporting noncompliance.

Though a minor violation will not lead to the disallowance or recapture of section 42 credits, a series of minor violations may be the equivalent of a major violation resulting in disallowance or recapture of credits. Determining the difference between a major and minor violation is subjective. The final regulations do not exclude minor violations from the reporting and recordkeeping requirement. However, to reduce the inspection violation paperwork, the final regulations require that the owner must either attach a statement summarizing the violations or a copy of each violation report to the annual owner certification submitted to the Agency. The owner must state on the certification whether the violation has been corrected. In addition, the final regulations require that the owner retain the original violation report for the Agency's physical inspection. Retention of the

original violation report is not required once the Agency reviews the violation and completes its inspection, unless the violation remains uncorrected.

5. *Correction of Noncompliance or Failure to Certify.*

The final regulations adopt commentators' suggestion to limit to a 3-year period after the end of the correction period in §1.42–5(e)(4) the requirement that Agencies file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS reporting the correction of the noncompliance or failure to certify.

6. *Compliance Monitoring Effective Dates.*

Commentators suggest an effective date of at least one year after the final regulations are published in the Federal Register. Commentators also recommend onsite inspections apply only to new buildings allocated section 42 credits after the effective date of the final regulations.

Because the amendments to the compliance monitoring regulations will require amendments to qualified allocation plans, the final regulations relating to compliance generally contain a January 1, 2001, effective date. Thus, the requirements to attach local health, safety, or building code violations to the annual owner certification and to inspect buildings and review tenant files for existing projects are effective January 1, 2001. The inspection requirement and tenant file review for new buildings is effective for buildings placed in service on or after January 1, 2001.

7. *Section 8 and Federal Civil Rights Laws.*

Two commentators state that insufficient controls are in place to ensure that low-income housing projects adhere to the requirement in section 42(h)(6)(B)(iv) of nondiscrimination against Section 8 voucher or certificate holders. The commentators suggest that the IRS could help compensate for lack of controls by working with HUD to ensure that Section 8 voucher or certificate holders are aware of, and have access to, low-income housing projects. The commentators also suggest that Agencies provide regional HUD offices a list of low-income housing projects in that state, with information that would be helpful for prospective tenants. One commentator suggests that the prohibition on discrimination based on Section 8 status be clarified to exclude policies that bar Section 8 tenants but have no substantial business justification. For example, low-income housing projects should not be permitted to exclude Section 8 voucher or certificate holders through a rule that requires every applicant to have income equal to at least three times the total rent.

The commentators also suggest that the Agencies should be required to develop a plan for educating applicants and owners of projects of the prohibition against discrimination on the basis of Section 8 voucher or certificate status. They recommend that the Agencies should be required to have a procedure for accepting and processing complaints about discrimination against Section 8 voucher or certificate holders. They also recommend that IRS and HUD should work together to study the circumstances under which Section 8 voucher or certificate holders are, or are not, accessing projects.

Section 42(h)(6)(A) provides that no credit shall be allowed by reason of section 42 with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year. Section 42(h)(6)(B)(iv) defines the term "extended low-income housing commitment" to include any agreement between the taxpayer and the housing credit agency that prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder. To help monitor compliance with section 42(h)(6)(B)(iv), the final regulations amend the annual owner certification relating to the extended low-income housing commitment under §1.42–5(c)(1)(xi) to require owners to certify that the owner has not refused to lease a unit in the project to a Section 8 applicant because the applicant holds a Section 8 voucher or certificate.

The IRS has informed HUD of the comments received about preventing discrimination based on Section 8 status. Agencies should provide HUD with publicly available information on section 42 low-income housing projects if HUD requests it.

A commentator also suggests that the compliance monitoring regulations be amended to acknowledge the authority of Title VIII of the 1968 Civil Rights Act, as well as HUD's Title VIII regulations; specify the civil rights obligations of the Agencies; and specify what developers and owners of projects must do to satisfy their civil rights obligations.

To monitor for compliance with the Fair Housing Act, the final regulations amend the annual owner certification relating to the general public use requirement in §1.42–5(c)(1)(v) to require owners to certify that no finding of discrimination under the Fair Housing Act has occurred for the project (a finding of discrimination includes an adverse final decision by HUD, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment from a Federal court).

B. *Sources and Uses of Funds*

Section 42(m)(2)(A) requires Agencies to limit the housing credit dollar amount allocated to a project to only the amount necessary for the financial feasibility of a project and its viability as a qualified low-income project through the credit period. The proposed regulations require an Agency to evaluate the housing credit dollar amount at four times: (1) at application for the housing credit dollar amount, (2) the allocation of the housing credit dollar amount, (3) the date the building is placed in service, and (4) after the building is placed in service, but before the Agency issues the Form 8609. Commentators recommend elimination of the evaluation at the placed-in-service date. In practice, Agencies currently evaluate the credit amount at the three other times. The final regulations adopt the recommendation by deleting the fourth time requirement and clarifying that the placed-in-service evaluation may occur not later than the date the Agency issues the Form 8609.

Commentators are concerned that the opinion by a certified public accountant, based upon the accountant's audit or examination, on the financial determinations and certifications required in the proposed regulations, could have significant cost implications, particularly for smaller developers. Commentators suggest limiting the requirement to projects with 25 or more units, or projects with total development costs of $5 million or more.

The third-party validation on financial information was recommended in the report by the General Accounting Office (GAO), "Tax Credits: Opportunities to Improve Oversight of the Low-Income Housing Program," (GAO/GGD/RCED-97–55), dated March 28, 1997. The GAO report states on page 93 that an accounting firm with a tax credit speciality would charge in the $5,000 to $7,500 range per engagement for tax credit certifications (opinion on total costs, eligible basis, and tax credit amount) prepared on the basis of an audit done in accordance with AICPA audit standards even for projects costing upwards of $5 million to $10 million. As a percentage of development costs, the CPA tax credit certifications represent a minimal cost for validating financial information. However, in recognition that the cost may be burdensome for smaller developers, the final regulations limit the requirement for an audited schedule of costs for projects with more than 10 units.

Two commentators were concerned that the meaning of the term "financial determinations and certifications" is unclear. A CPA would not be able to evaluate what needs to be audited and whether there are relevant and reliable criteria against which the information can be evaluated. To conduct an audit or attestation engagement, CPAs require that the subject matter be defined and that such subject matter be capable of evaluation against reasonable criteria. Reasonable criteria are essential so that CPAs using the same criteria will be able to arrive at similar conclusions.

Another concern expressed by commentators involved uncertainty as to whether the CPA is being asked to report on financial information that is only historical or whether the CPA is also being asked to examine prospective financial information. CPAs can compile or examine and report on certain types of prospective financial information. However, such engagements generally are more costly than audits of historical information because of minimum presentation guidelines required by professional standards as well as increased risk associated with future-oriented information. The commentators believe that if an Agency were to require CPAs to be associated with prospective financial information, the related costs to the taxpayer may far exceed any perceived benefits to the Agency. Accordingly, the final regulations have been revised to specify that the CPA's opinion only relates to historical project costs.

C. *Correction of Administrative Errors and Omissions*

Commentators recommend filing the corrected allocation document with the current year's Form 8610, "Annual Low-Income Housing Credit Agencies Report," instead of amending the Form 8610 for the year the allocation was made. Because the administrative errors covered by the automatic approval provision will not have an effect on the total amount of credit the Agency allocated to the building(s) or project, commentators view an amended Form 8610 as unnecessary. Agency recordkeeping would be simplified if all corrected allocation documents could be submitted with the current year's Form 8610. The final regulations adopt this recommendation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the burden on taxpayers is minimal and the burden on small entity Agencies is not significant. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Paul F. Handleman, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.42–17 also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42–5 is amended by:

1. Removing the word "Revenue" in paragraph (b)(1)(iv) and adding "Omnibus Budget" in its place.

2. Adding paragraph (b)(3).

3. Revising paragraphs (c)(1)(v), (c)(1)(vi), (c)(1)(xi), (c)(2)(ii), and (c)(2)(iii).

4. Removing the word "project" in paragraph (c)(1)(x) and adding "building" in its place.

5. Removing the word "and" at the end of paragraph (c)(1)(x).

6. Adding paragraph (c)(1)(xii).

7. Removing the language "paragraph (c)(2)(ii)(A), (B), and (C) of this section" from the first sentence in paragraph (c)(4)(i) and adding "paragraph (c)(2)(ii) of this section" in its place.

8. Removing the language "Farmers Home Administration (FmHA)" in the first sentence in paragraph (c)(4)(i) and adding "Rural Housing Service (RHS), formerly known as Farmers Home Administration," in its place.

9. Removing the language "FmHA" in paragraph (c)(4)(ii) and adding "RHS" in its place in each place it appears.

10. Removing the language "An Agency chooses the review requirement of paragraph (c)(2)(ii)(A) of this section and some of the buildings selected for review are" from the first sentence in the example in paragraph (c)(4)(iii) and adding "An Agency selects for review" in its place.

11. Removing the language "FmHA" in paragraph (c)(4)(iii) *Example* and adding "RHS" in its place in each place it appears.

12. Adding paragraph (c)(5).

13. Revising paragraph (d).

14. Removing the language "(c)(2)(ii)(A), (B), or (C) of this section (whichever is applicable)" from paragraph (e)(2) and adding the language "(c)(2)(ii) of this section" in its place.

15. Adding a sentence at the end of paragraph (e)(3)(i).

16. Removing the language "paragraph (e)(3) of this section" in the third sentence in paragraph (f)(1)(i) and adding "paragraphs (c)(5) and (e)(3) of this section" in its place.

17. Adding three sentences at the end of paragraph (h).

The revisions and additions read as follows:

§1.42–5 Monitoring compliance with low-income housing credit requirements.

* * * * *

(b) * * *

(3) *Inspection record retention provision.* Under the inspection record retention provision, the owner of a low-income housing project must be required to retain the original local health, safety, or building code violation reports or notices that were issued by the State or local government unit (as described in paragraph (c)(1)(vi) of this section) for the Agency's inspection under paragraph (d) of this section. Retention of the original violation reports or notices is not required once the Agency reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

(c) * * * (1) * * *

(v) All units in the project were for use by the general public (as defined in §1.42–9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601 – 3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;

(vi) The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification submitted to the Agency under paragraph (c)(1) of this section. In addition, the owner must state whether the violation has been corrected;

* * * * *

(xi) An extended low-income housing commitment as described in section 42(h)(6) was in effect (for buildings subject to section 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 103 Stat. 2106, 2308 - 2311 (1989)), including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f (for buildings subject to section 13142(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438 – 439 (1993)); and

(xii) All low-income units in the project were used on a nontransient basis (except for transitional housing for the homeless provided under section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under section 42(i)(3)(B)(iv)).

(2) * * *

(ii) Require that with respect to each low-income housing project—

(A) The Agency must conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and

(B) At least once every 3 years, the Agency must conduct on-site inspections of all buildings in the project and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and

(iii) Require that the Agency randomly select which low-income units and tenant records are to be inspected and reviewed by the Agency. The review of tenant records may be undertaken wherever the owner maintains or stores the records (either on-site or off-site). The units and tenant records to be inspected and reviewed must be chosen in a manner that will not give owners of low-income housing projects advance notice that a unit and tenant records for a particular year will or will not be inspected and reviewed. However, an Agency may give an owner reasonable notice that an inspection of the building and low-income units or tenant record review will occur so that the owner may notify tenants of the inspection or assemble tenant records for review (for example, 30 days notice of inspection or review).

* * * * *

(5) *Agency reports of compliance monitoring activities.* The Agency must report its compliance monitoring activities annually on Form 8610, "Annual Low-Income Housing Credit Agencies Report."

(d) *Inspection provision*—(1) *In general.* Under the inspection provision, the Agency must have the right to perform an on-site inspection of any low-income housing project at least through the end of the compliance period of the buildings in the project. The inspection provision of this paragraph (d) is a separate requirement from any tenant file review under paragraph (c)(2)(ii) of this section.

(2) *Inspection standard.* For the on-site inspections of buildings and low- income units required by paragraph (c)(2)(ii) of this section, the Agency must review any local health, safety, or building code violations reports or notices retained by the owner under paragraph (b)(3) of this section and must determine—

(i) Whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or

(ii) Whether the buildings and units satisfy, as determined by the Agency, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A

low-income housing project under section 42 must continue to satisfy these codes and, if the Agency becomes aware of any violation of these codes, the Agency must report the violation to the Service. However, provided the Agency determines by inspection that the HUD standards are met, the Agency is not required under this paragraph (d)(2)(ii) to determine by inspection whether the project meets local health, safety, and building codes.

(3) *Exception from inspection provision.* An Agency is not required to inspect a building under this paragraph (d) if the building is financed by the RHS under the section 515 program, the RHS inspects the building (under 7 CFR part 1930), and the RHS and Agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the Agency of the inspection results.

(4) *Delegation.* An Agency may delegate inspection under this paragraph (d) to an Authorized Delegate retained under paragraph (f) of this section. Such Authorized Delegate, which may include HUD or a HUD-approved inspector, must notify the Agency of the inspection results.

(e) * * *

(3) * * *

(i) * * * If the noncompliance or failure to certify is corrected within 3 years after the end of the correction period, the Agency is required to file Form 8823 with the Service reporting the correction of the noncompliance or failure to certify.

* * * * *

(h) * * * In addition, the requirements in paragraphs (b)(3) and (c)(1)(v), (vi), and (xi) of this section (involving recordkeeping and annual owner certifications) and paragraphs (c)(2)(ii)(B), (c)(2)(iii), and (d) of this section (involving tenant file reviews and physical inspections of existing projects, and the physical inspection standard) are applicable January 1, 2001. The requirement in paragraph (c)(2)(ii)(A) of this section (involving tenant file reviews and physical inspections of new projects) is applicable for buildings placed in service on or after January 1, 2001. The requirements in paragraph (c)(5) of this section (involving Agency reporting of compliance monitoring activities to the Service) and paragraph (e)(3)(i) of this section (involving Agency reporting of corrected noncompliance or failure to certify within 3 years after the end of the correction period) are applicable January 14, 2000.

Par. 3. Section 1.42–6 is amended by:

1. In paragraph (c)(3), second sentence, remove the language "Annual Low-Income Housing Credit Agencies Report," and add the language " 'Annual Low-Income Housing Credit Agencies Report,' " in its place.

2. In paragraph (d)(1), first sentence, remove the language "Low-Income Housing Credit Allocation Certification," and add the language " 'Low-Income Housing Credit Allocation Certification,' " in its place.

3. Revising the first sentence in paragraph (d)(4)(ii).

§1.42–6 Buildings qualifying for carryover allocations.

* * * * *

(d) * * *

(4) * * *

(ii) *Agency.* The Agency must retain the original carryover allocation document made under paragraph (d)(2) of this section and file Schedule A (Form 8610), "Carryover Allocation of the Low-Income Housing Credit," with the Agency's Form 8610 for the year the allocation is made. * * *

* * * * *

Par. 4. Section 1.42–11 is amended by revising the last sentence in paragraph (b)(3)(ii)(A) to read as follows:

§1.42–11 Provision of services.

* * * * *

(b) * * *

(3) * * *

(ii) * * * (A) * * * For a building described in section 42(i)(3)(B)(iii) (relating to transitional housing for the homeless) or section 42(i)(3)(B)(iv) (relating to single-room occupancy), a supportive service includes any service provided to assist tenants in locating and retaining permanent housing.

* * * * *

Par. 5. Section 1.42–12 is amended by adding paragraph (c) to read as follows:

§1.42–12 Effective dates and transitional rules.

* * * * *

(c) *Carryover allocations.* The rule set forth in §1.42–6(d)(4)(ii) relating to the requirement that state and local housing agencies file Schedule A (Form 8610), "Carryover Allocation of the Low-Income Housing Credit," is applicable for carryover allocations made after December 31, 1999.

Par. 6. Section 1.42–13 is amended by:

1. Revising the introductory text of paragraph (b)(3)(iii).

2. Adding paragraphs (b)(3)(vi), (b)(3)(vii), and (b)(3)(viii).

3. Adding a sentence at the end of paragraph (d).

The revisions and additions read as follows:

§1.42–13 Rules necessary and appropriate; housing credit agencies' correction of administrative errors and omissions.

* * * * *

(b) * * *

(3) * * *

(iii) *Secretary's prior approval required.* Except as provided in paragraph (b)(3)(vi) of this section, an Agency must obtain the Secretary's prior approval to correct an administrative error or omission, as described in paragraph (b)(2) of this section, if the correction is not made before the close of the calendar year of the error or omission and the correction—

* * * * *

(vi) *Secretary's automatic approval.* The Secretary grants automatic approval to correct an administrative error or omission described in paragraph (b)(2) of this section if—

(A) The correction is not made before the close of the calendar year of the error or omission and the correction is a numerical change to the housing credit dollar amount allocated for the building or multiple-building project;

(B) The administrative error or omission resulted in an allocation document (the Form 8609, "Low-Income Housing Credit Allocation Certification," or the allocation document under the requirements of section 42(h)(1)(E) or (F), and §1.42–6(d)(2)) that either did not accurately reflect the number of buildings in a project (for example, an allocation document for a 10-building project only references 8 buildings instead of 10 buildings), or the correct information (other than the amount of credit allocated on the allocation document);

(C) The administrative error or omission does not affect the Agency's ranking of the building(s) or project and the total amount of credit the Agency allocated to the building(s) or project; and

(D) The Agency corrects the administrative error or omission by following the procedures described in paragraph (b)(3)(vii) of this section.

(vii) *How Agency corrects errors or omissions subject to automatic approval.* An Agency corrects an administrative error or omission described in paragraph (b)(3)(vi) of this section by—

(A) Amending the allocation document described in paragraph (b)(3)(vi)(B) of this section to correct the administrative error or omission. The Agency will indicate on the amended allocation document that it is making the "correction under §1.42–13(b)(3)(vii)." If correcting the allocation document requires including any additional B.I.N.(s) in the document, the document must include any B.I.N.(s) already existing for buildings in the project. If possible, the additional B.I.N.(s) should be sequentially numbered from the existing B.I.N.(s);

(B) Amending, if applicable, the Schedule A (Form 8610), "Carryover Allocation of the Low-Income Housing Credit," and attaching a copy of this schedule to Form 8610, "Annual Low-Income Housing Credit Agencies Report," for the year the correction is made. The Agency will indicate on the schedule that it is making the "correction under §1.42–13(b)(3)(vii)." For a carryover allocation made before January 1, 2000, the Agency must complete Schedule A (Form 8610), and indicate on the schedule that it is making the "correction under §1.42–13(b)(3)(vii)";

(C) Amending, if applicable, the Form 8609 and attaching the original of this amended form to Form 8610 for the year the correction is made. The Agency will indicate on the Form 8609 that it is making the "correction under §1.42–13(b)(3)(vii)"; and

(D) Mailing or otherwise delivering a copy of any amended allocation document and any amended Form 8609 to the affected taxpayer.

(viii) *Other approval procedures.* The Secretary may grant automatic approval to correct other administrative errors or omissions as designated in one or more documents published either in the **Federal Register** or in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter).

* * * * *

(d) * * * Paragraphs (b)(3)(vi), (vii), and (viii) of this section are effective January 14, 2000.

Par. 7. Section 1.42–17 is added to read as follows:

§1.42–17 Qualified allocation plan.

(a) *Requirements*—(1) *In general.* [Reserved]

(2) *Selection criteria.* [Reserved]

(3) *Agency evaluation.* Section 42(m)(2)(A) requires that the housing credit dollar amount allocated to a project is not to exceed the amount the Agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. In making this determination, the Agency must consider—

(i) The sources and uses of funds and the total financing planned for the project. The taxpayer must certify to the Agency the full extent of all federal, state, and local subsidies that apply (or which the taxpayer expects to apply) to the project. The taxpayer must also certify to the Agency all other sources of funds and all development costs for the project. The taxpayer's certification should be sufficiently detailed to enable the Agency to ascertain the nature of the costs that will make up the total financing package, including subsidies and the anticipated syndication or placement proceeds to be raised. Development cost information, whether or not includible in eligible basis under section 42(d), that should be provided to the Agency includes, but is not limited to, site acquisition costs, construction contingency, general contractor's overhead and profit, architect's and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, and developer fees;

(ii) Any proceeds or receipts expected to be generated by reason of tax benefits;

(iii) The percentage of the housing credit dollar amount used for project costs other than the costs of intermediaries. This requirement should not be applied so as to impede the development of projects in hard-to-develop areas under section 42(d)(5)(C); and

(iv) The reasonableness of the developmental and operational costs of the project.

(4) *Timing of Agency evaluation*—(i) *In general.* The financial determinations and certifications required under paragraph (a)(3) of this section must be made as of the following times—

(A) The time of the application for the housing credit dollar amount;

(B) The time of the allocation of the housing credit dollar amount; and

(C) The date the building is placed in service.

(ii) *Time limit for placed-in-service evaluation.* For purposes of paragraph (a)(4)(i)(C) of this section, the evaluation for when a building is placed in service must be made not later than the date the Agency issues the Form 8609, "Low-Income Housing Credit Allocation Certification." The Agency must evaluate all sources and uses of funds under paragraph (a)(3)(i) of this section paid, incurred, or committed by the taxpayer for the project up until date the Agency issues the Form 8609.

(5) *Special rule for final determinations and certifications.* For the Agency's evaluation under paragraph (a)(4)(i)(C) of this section, the taxpayer must submit a schedule of project costs. Such schedule is to be prepared on the method of accounting used by the taxpayer for federal income tax purposes, and must detail the project's total costs as well as those costs that may qualify for inclusion in eligible basis under section 42(d). For projects with more than 10 units, the schedule of project costs must be accompanied by a Certified Public Accountant's audit report on the schedule (an Agency may require an audited schedule of project costs for projects with fewer than 11 units). The CPA's audit must be conducted in accordance with generally accepted auditing standards. The auditor's report must be unqualified.

(6) *Bond-financed projects.* A project qualifying under section 42(h)(4) is not entitled to any credit unless the governmental unit that issued the bonds (or on behalf of which the bonds were issued), or the Agency responsible for issuing the Form(s) 8609 to the project, makes determinations under rules similar to the rules in paragraphs (a)(3), (4), and (5) of this section.

(b) *Effective date.* This section is ef-

fective January 1, 2001.

Part 602–OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In §602.101, paragraph (b) is amended by revising the entry for 1.42–5 and adding an entry for 1.42–17 to the table in numerical order to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

Robert E. Wenzel,
Acting Commissioner of Internal Revenue.

Approved December 28, 1999.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on January 13, 2000, 8:45 a.m., and published in the issue of the Federal Register for January 14, 2000, 65 F.R. 2323)

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.42–5	1545-1357
1.42–17	1545-1357
* * * * *	

Section 368(a)(1)(A).—Definitions Relating to Corporate Reorganizations

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

Application of section 368(a)(1)(A) to divisive mergers. The ruling holds that a state law merger will not qualify as a reorganization under section 368(a)(1)(A) of the Code if the merger does not result in one corporation acquiring the assets of a target corporation and the target corporation ceasing to exist.

Rev. Rul. 2000–5

ISSUES:

Whether a transaction in which (1) a target corporation "merges" under state law with and into an acquiring corporation and the target corporation does not go out of existence, or (2) a target corporation "merges" under state law with and into two or more acquiring corporations and the target corporation goes out of existence, qualifies as a reorganization under § 368(a)(1)(A) of the Internal Revenue Code?

FACTS:

Situation (1). A target corporation transfers some of its assets and liabilities to an acquiring corporation, retains the remainder of its assets and liabilities, and remains in existence following the transaction. The target corporation's shareholders receive stock in the acquiring corporation in exchange for part of their target corporation stock and they retain their remaining target corporation stock. The transaction qualifies as a merger under state X corporate law.

Situation (2). A target corporation transfers some of its assets and liabilities to each of two acquiring corporations. The target corporation liquidates and the target corporation's shareholders receive stock in each of the two acquiring corporations in exchange for their target corporation stock. The transaction qualifies as a merger under state X corporate law.

DISCUSSION:

The purpose of the reorganization provisions of the Code is to provide tax-free treatment to certain exchanges incident to readjustments of corporate structures made in one of the specified ways described in the Code. Section 1.368–1(b) of the Income Tax Regulations. In 1921, Congress defined a reorganization as including ". . . a merger or consolidation (including the acquisition by one corporation . . . of substantially all the properties of another corporation)." In 1934, Congress separated this rule into two distinct provisions. In the predecessor of current § 368(a)(1)(C), an "acquisition by one corporation . . . of substantially all the properties of another corporation" continued to be a reorganization where payment was effectuated with the acquiror's voting stock. In the predecessor of current § 368(a)(1)(A), the terms "merger or consolidation" were qualified by requiring that they be "statutory" mergers and consolidations. The word "statutory" was added to the definition of a reorganization so that the definition "will conform more closely to the general requirements of [state] corporation law." *See* H. R. Rep. No. 704, 73d Cong., 2 d Sess. 14 (1934).

Historically, corporate law merger statutes have operated to ensure that "[a] merger ordinarily is an absorption by one corporation of the properties and franchises of another whose stock it has acquired. The merged corporation ceases to exist, and the merging corporation alone survives." *Cortland Specialty Co. v. Commissioner*, 60 F.2d 937, 939 (2d Cir. 1932), *cert. denied*, 288 U.S. 599 (1933); for other cases that describe mergers as requiring that the target corporation transfer its assets and cease to exist, *see, e.g., Vulcan Materials Company v. U.S.*, 446 F.2d 690, 694 (5th Cir. 1971), *cert. denied*, 404 U.S. 942 (1971); *Fisher v. Commissioner*, 108 F.2d 707, 709 (6th Cir. 1939), *cert. denied*, 310 U.S. 627 (1939). Thus, unlike § 368(a)(1)(C), in which Congress included a "substantially all the properties"

requirement, it was not necessary for Congress to explicitly include a similar requirement in § 368(a)(1)(A) because corporate law merger statutes contemplated an acquisition of the target corporation's assets by the surviving corporation by operation of law.

Compliance with a corporate law merger statute does not by itself qualify a transaction as a reorganization. *See, e.g., Southwest Natural Gas Co. v. Commissioner*, 189 F.2d 332 (5th Cir. 1951), *cert. denied*, 342 U.S. 860 (1951) (holding that a state law merger was not a reorganization under § 368(a)(1)(A)); *Roebling v. Commissioner*, 143 F.2d 810 (3d Cir. 1944), *cert. denied*, 323 U.S. 773 (1944) (same holding). In addition to satisfying the requirements of business purpose, continuity of business enterprise and continuity of interest, in order to qualify as a reorganization under § 368(a)(1)(A), a transaction effectuated under a corporate law merger statute must have the result that one corporation acquires the assets of the target corporation by operation of the corporate law merger statute and the target corporation ceases to exist. The transactions described in Situations (1) and (2) do not have the result that one corporation acquires the assets of the target corporation by operation of the corporate law merger statute and the target corporation ceases to exist. Therefore, these transactions do not qualify as reorganizations under § 368(a)(1)(A).

In contrast with the operation of corporate law merger statutes, a divisive transaction is one in which a corporation's assets are divided among two or more corporations. Section 355 provides tax-free treatment for certain divisive transactions, but only if a number of specific requirements are satisfied. Congress intended that § 355 be the sole means under which divisive transactions will be afforded tax-free status and, thus, specifically required the liquidation of the acquired corporation in reorganizations under both §§ 368(a)(1)(C) and 368(a)(1)(D) in order to prevent these reorganizations from being used in divisive transactions that did not satisfy § 355. *See* S. Rep. No. 1622, 83d Cong., 2d Sess. 274 (1954); S. Rep. No. 169, 98th Cong., 2d Sess. 204 (1984). No specific liquidation requirement was necessary for statutory mergers because corporate law merger statutes contemplated that only one corporation survived a merger. The transaction described in Situation (1) is divisive because, after the transaction, the target corporation's assets and liabilities are held by both the target corporation and acquiring corporation and the target corporation's shareholders hold stock in both the target corporation and acquiring corporation. The transaction described in Situation (2) is divisive because, after the transaction, the target corporation's assets and liabilities are held by each of the two acquiring corporations and the target corporation's shareholders hold stock in each of the two acquiring corporations.

HOLDING:

The transactions described in Situations (1) and (2) do not qualify as reorganizations under § 368(a)(1)(A). However, the transactions described in Situations (1) and (2) possibly may qualify for tax-free treatment under other provisions of the Code.

DRAFTING INFORMATION:

The principal author of this revenue ruling is Reginald Mombrun of the Office of the Assistant Chief Counsel (Corporate). For further information regarding this revenue ruling, contact Reginald Mombrun on (202) 622-7750 (not a toll-free call).

Section 988.—Treatment of Certain Foreign Currency Transactions

26 CFR 1.988–2: Recognition and computation of exchange gain or loss.

T.D. 8860

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Treatment of Income and Expense From Certain Hyperinflationary, Nonfunctional Currency Transactions and Certain Notional Principal Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the treatment of income and deductions arising from certain foreign currency transactions denominated in hyperinflationary currencies and coordinates section 988 with the section 446 regulations pertaining to significant nonperiodic payments. These regulations are intended to prevent distortions in computing income and deductions of taxpayers who enter into certain transactions in hyperinflationary currencies, and nonfunctional currency, notional principal contracts with significant nonperiodic payments.

DATES: These regulations are effective February 14, 2000.

FOR FURTHER INFORMATION CONTACT: Roger M. Brown at (202) 622-3830 (not a toll-free number) of the Office of the Associate Chief Counsel (International) within the Office of the Chief Counsel, Room 4554, 1111 Constitution Avenue, NW., Washington, DC. 20224.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1992, proposed regulations were published in the **Federal Register** at (57 F.R. 9217 [INTL–15–91, 1992–1 C.B. 1202]). The IRS received two written comments on the proposed regulations, which are discussed below. No public hearing was held and no requests to speak were received. Having considered the comments, the IRS and Treasury Department adopt the proposed regulations, as modified by this Treasury decision.

Explanation of Provisions

I. *Hyperinflationary Instruments*

A. Proposed Regulations

The proposed regulations under §1.988–2(b)(15) generally provided that currency gain or loss on debt instruments and demand deposits entered into or acquired when the currency in which the item was denominated was hyperinflationary must be realized annually under a

mark-to-market methodology. For purposes of determining the character and source (or allocation) of such currency gain or loss, the gain or loss was generally treated as an increase in, or a reduction of, interest income or expense.

The proposed §1.988–2(b)(15) regulations excluded instruments described in section 988(a)(3)(C) (relating to non-dollar, related-party loans where the rate of interest is at least 10 percentage points higher than the Federal mid-term rate) from these rules. Proposed regulations §1.988–2(d)(5) and (e)(7) generally provided that currency gain or loss realized with respect to section 988 forward contracts, futures contracts, option contracts and similar items (such as currency swap contracts) entered into or acquired when the currency in which such an item is denominated was hyperinflationary was recognized annually under a mark-to-market methodology.

B. Discussion of Comments and Final Regulations

1. Comments and the Treasury and IRS's responses

One of the comments responding to the proposed regulations criticized the exclusion of loans described in section 988(a)(3)(C) from the rules of proposed regulation §1.988–2(b)(15). The comment noted that it was inappropriate to treat related-party loans differently from loans between unrelated parties in this context.

Proposed regulation §1.988–2(b)(15) excluded loans subject to section 988(a)(3)(C) from the mark-to-market rule of the proposed regulations because the loans were already subject to mark-to-market treatment under section 988(a)(3)(C), which was enacted to prevent manipulation of the section 904(a) foreign tax credit limitation through related party loans with artificially high interest rates. See H. Conf. Rep. No. 841, 99th Cong., 2d Sess. 668 (1986). However, due to interest income's U.S. source treatment under section 988(a)(3)(C)(ii), mark-to-market treatment under section 988(a)(3)(C), rather than §1.988–2(b)(15), would be, in most cases, more unfavorable to taxpayers.

Since the rules of proposed regulation §1.988–2(b)(15) were consistent with the approach of section 988(a)(3)(C) and prevented manipulation of the type Congress addressed in that section, the IRS and Treasury agree that transactions described in section 988(a)(3)(C) should not be excluded from the mark-to-market rule of the final regulations. The IRS and Treasury also have concluded that to the extent a debt instrument is subject to the rules of §1.988–2(b)(15), the application of section 988(a)(3)(C)'s resourcing rule is not necessary. The final regulations reflect these changes.

The other comment identified the need for coordinating the mark-to-market regime for hyperinflationary instruments under proposed regulation §1.988–2(b)(15), and the mark-to-market election under proposed regulation §1.988–5(f) for all section 988 transactions. The final regulations do not include a rule coordinating these two mark-to-market regimes because the mark-to-market election for all section 988 transactions is still in proposed form. Accordingly, the IRS and Treasury have decided that consideration of the proper coordination is most appropriate when the regulations relating to the general mark-to-market election for all section 988 transactions are finalized.

2. Other changes to the final regulations

(a) Source and Character of Gain or Loss

The proposed regulations provided that any exchange gain or loss realized upon marking to market a debt instrument or a demand deposit under proposed regulation §1.988–2(b)(15)(i) was to be directly allocable to the interest income or interest expense from the debt instrument or deposit. Accordingly, the gain or loss reduced or increased the amount of interest income or interest expense paid or accrued during that year with respect to that instrument or deposit. Additionally, if realized exchange gain exceeded interest expense of an issuer, or realized exchange loss exceeded interest income of a holder or depositor, the character and source of such excess amount were to be determined under the general rules of §§1.988–3 and 1.988–4.

The assumption underlying this proposed treatment was that in hyperinflationary conditions, high nominal interest rates perform two functions: compensate lenders for currency loss attributable to the repayment of the principal with a devalued currency, and account for borrowers' currency gain on the repayment of the principal with a devalued currency. In instances, however, where hyperinflationary conditions are subsiding and a lender would actually have currency gain on principal repayment (and the borrower would have currency loss on principal repayment), these assumptions are no longer appropriate. For example, if a lender has currency gain on the marking to market (for currency fluctuations only) of the principal of a debt instrument, high nominal interest rates would not be compensating the lender for the decline in the value of the principal as there would be a gain on the principal.

Accordingly, the final regulations retain the source and character rule of the proposed regulations (direct allocation of the exchange gain or loss against interest expense or income, respectively) when hyperinflationary conditions result in exchange loss to lenders or exchange gain to borrowers on the principal amount of a debt instrument or deposit. However, where a lender has exchange gain or a borrower has exchange loss on the debt instrument — which may occur as hyperinflationary conditions subside — the final regulations clarify that the exchange gain or loss is not allocated against interest expense or income. Rather, the exchange gain or loss is treated under the normal currency character and source rules of §§1.988–3 and 1.988–4. Thus, for example, if an issuer has both interest expense and currency loss, the currency loss is sourced and characterized under section 988 and does not affect the determination of interest expense.

(b) Synthetic, Non-hyperinflationary Currency Debt Instruments

The final regulations also make clear that when a debt instrument has interest and principal payments that are to be made by reference to a non-hyperinflationary currency or item (commonly known as interest and principal protection features), the instrument is not marked to market under the final section 988 regulations. This is because the instrument is, in substance, a synthetic non-hyperinflationary instrument and does not experience the distortions associated with a hyperinflationary instrument.

(c) Treatment of Hyperinflationary Contracts

Proposed regulation §1.988–2(d)(5) generally provided that currency gain or

loss on derivative contracts described in §1.988–1(a)(2)(iii) and denominated in a currency that was hyperinflationary at the time the contract was entered into was to be realized annually under a mark-to-market methodology. This proposed regulation was issued prior to promulgation of the §1.446–4 regulations (published in the **Federal Register** on July 18, 1994) which requires that, to clearly reflect income, the timing of income, deduction, gain or loss on a hedge must match the timing of income, deduction, gain or loss on the item being hedged. The final regulations modify proposed regulation §1.988–2(d)(5) by providing that §1.446–4, to the extent applicable, will take precedence over proposed regulation §1.988–2(d)(5). This is because the IRS and Treasury believe that a clearer reflection of income is present where the income and deductions arising from an item hedged under §1.446–4 is matched with the income and deductions arising from the hedge. See §1.446–4(b).

(d) Demand and Time Deposits

The proposed regulations applied the mark-to-market rules to demand deposits denominated in a currency that was hyperinflationary at the time the deposit was entered into. Under the final regulations, the mark-to-market rules apply to demand and time deposits that provide for payments denominated in or by reference to a currency which is hyperinflationary at the time the taxpayer enters into or otherwise acquires the deposit, or whose interest rate reflects hyperinflationary conditions in a country. Similar clarifications have been made with respect to the definitions of hyperinflationary debt instruments and currency swap contracts.

3. Abusive transactions

The Treasury and the IRS are concerned about the use of hyperinflationary currencies in transactions motivated by tax considerations. Because the direction of exchange rates is relatively predictable in hyperinflation economies, some taxpayers have attempted to use such currencies in transactions lacking economic substance. See, e.g., *Agro Science Co. v. Commissioner*, T.C. Memo. 1989–687, *aff'd*, 927 F.2d 213 (5th Cir.), *cert. denied*, 502 U.S. 907 (1991). However, section 988 may be applied by the IRS in a manner that reflects the proper timing, source, and character of income, gain, loss, or expense arising from a transaction whose form is not in accordance with its economic substance. §§1.988–1(a)(11) and 1.988–2(f); *Agro Science Co. v. Commissioner*, *supra*. Accordingly, the rules contained in this Treasury decision will be applied within the framework of these general economic substance principles.

II. Significant Non-periodic Payments and Currency Swaps

The proposed regulations coordinated section 988 with the section 446 regulations pertaining to significant nonperiodic payments. The final regulations maintain this coordination and clarify that exchange gain or loss may be realized on the principal and interest components of a significant nonperiodic payment.

III. *Proposed Change to Base Period in Notice of Proposed Rulemaking*

In REG–116567–99 on page 463, the IRS and Treasury are publishing a notice of proposed rulemaking that proposes to change the period during which inflation rates are measured in the determination of whether a currency is hyperinflationary for purposes of section 988 (base period). The effect of this change to §1.988–1(f) (defining hyperinflationary currency for purposes of section 988) is to take into account current year, hyperinflationary conditions, rather than determining whether a currency is hyperinflationary based on the three years prior to the current year. The proposed change relates only to section 988 and not to the dollar approximate separate transactions method of §1.985–3 (DASTM). However, other sections, such as §1.267(f)–1(e) (relating to application of the loss disallowance rule of section 267(a)(1) as applied to related party, nonfunctional currency loans), which make reference to the section 988 definition of hyperinflation will be affected.

Special Analyses

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

Drafting Information

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

* * * * *

Adoption of the Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.988–0 in the Table of Contents is amended by:

1. The entry for §1.988–2(b)(14)–(15) is removed.
2. An entry for §1.988–2(b)(14) is added.
3. An entry for §1.988–2(b)(15) is added.
4. The entry for §1.988–2(d)(5) is revised.
5. The entry for §1.988–2(e)(7) is revised.

The revisions and additions read as follows:

§1.988–0 Taxation of gain or loss from a section 988 transaction; Table of Contents.

* * * * *

§1.988–2 Recognition and computation of exchange gain or loss.

* * * * *

(b) ***

(14) [Reserved]

(15) Debt instruments and deposits denominated in hyperinflationary currencies.

* * * * *

(d) ***

(5) Hyperinflationary contracts.

(e) ***

(7) Special rules for currency swap contracts in hyperinflationary currencies.

* * * * *

Par. 3. Section 1.988–2 is amended by:

1. Adding paragraphs (b)(14) and (b)(15).

2. Adding paragraph (d)(5).

3. Adding paragraph (e)(3)(iv).

4. Adding paragraph (e)(7).

The additions read as follows:

§1.988–2 Recognition and computation of exchange gain or loss.

* * * * *

(b) ***

(14) [Reserved]

(15) *Debt instruments and deposits denominated in hyperinflationary currencies*— (i) *In general.* If a taxpayer issues, acquires, or otherwise enters into or holds a hyperinflationary debt instrument (as defined in paragraph (b)(15)(vi)(A) of this section) or a hyperinflationary deposit (as defined in paragraph (b)(15)(vi)(B) of this section) on which interest is paid or accrued that is denominated in (or determined by reference to) a nonfunctional currency of the taxpayer, then the taxpayer shall realize exchange gain or loss with respect to such instrument or deposit for its taxable year determined by reference to the change in exchange rates between—

(A) The later of the first day of the taxable year, or the date the instrument was entered into (or an amount deposited); and

(B) The earlier of the last day of the taxable year, or the date the instrument (or deposit) is disposed of or otherwise terminated.

(ii) *Only exchange gain or loss is realized.* No gain or loss is realized under paragraph (b)(15)(i) by reason of factors other than movement in exchange rates, such as the creditworthiness of the debtor.

(iii) *Special rule for synthetic, non-hyperinflationary currency debt instruments*—(A) *General rule.* Paragraph (b)(15)(i) does not apply to a debt instrument that has interest and principal payments that are to be made by reference to a currency or item that does not reflect hyperinflationary conditions in a country (within the meaning of §1.988–1(f)).

(B) *Example.* Paragraph (b)(15)(iii)(A) is illustrated by the following example:

Example. When the Turkish lira (TL) is a hyperinflationary currency, A, a U.S. corporation with the U.S. dollar as its functional currency, makes a 5 year, 100,000 TL-denominated loan to B, an unrelated corporation, at a 10% interest rate when 1,000 TL equals $1. Under the terms of the debt instrument, B must pay interest annually to A in amount of Turkish lira that is equal to $100. Also under the terms of the debt instrument, B must pay A upon maturity of the debt instrument an amount of Turkish lira that is equal to $1,000. Although the principal and interest are payable in a hyperinflationary currency, the debt instrument is a synthetic dollar debt instrument and is not subject to paragraph (b)(15)(i) of this section.

(iv) *Source and character of gain or loss*—(A) *General rule for hyperinflationary conditions.* The rules of this paragraph (b)(15)(iv)(A) shall apply to any taxpayer that is either an issuer of (or obligor under) a hyperinflationary debt instrument or deposit and has currency gain on such debt instrument or deposit, or a holder of a hyperinflationary debt instrument or deposit and has currency loss on such debt instrument or deposit. For purposes of subtitle A of the Internal Revenue Code, any exchange gain or loss realized under paragraph (b)(15)(i) of this section is directly allocable to the interest expense or interest income, respectively, from the debt instrument or deposit (computed under this paragraph (b)), and therefore reduces or increases the amount of interest income or interest expense paid or accrued during that year with respect to that instrument or deposit. With respect to a debt instrument or deposit during a taxable year, to the extent exchange gain realized under paragraph (b)(15)(i) of this section exceeds interest expense of an issuer, or exchange loss realized under paragraph (b)(15)(i) of this section exceeds interest income of a holder or depositor, the character and source of such excess amount shall be determined under §§1.988–3 and 1.988–4.

(B) *Special rule for subsiding hyperinflationary conditions.* If the taxpayer is an issuer of (or obligor under) a hyperinflationary debt instrument or deposit and has currency loss, or if the taxpayer is a holder of a hyperinflationary debt instrument or deposit and has currency gain, then for purposes of subtitle A of the Internal Revenue Code, the character and source of the currency gain or loss is determined under §§1.988–3 and 1.988–4. Thus, if an issuer has both interest expense and currency loss, the currency loss is sourced and characterized under section 988, and does not affect the determination of interest expense.

(v) *Adjustment to principal or basis.* Any exchange gain or loss realized under paragraph (b)(15)(i) of this section is an adjustment to the functional currency principal amount of the issuer, functional currency basis of the holder, or the functional currency amount of the deposit. This adjusted amount or basis is used in making subsequent computations of exchange gain or loss, computing the basis of assets for purposes of allocating interest under §§1.861–9T through 1.861–12T, and 1.882–5, or making other determinations that may be relevant for computing taxable income or loss.

(vi) *Definitions*—(A) *Hyperinflationary debt instrument.* A hyperinflationary debt instrument is a debt instrument that provides for—

(*1*) Payments denominated in or determined by reference to a currency that is hyperinflationary (as defined in §1.988–1(f)) at the time the taxpayer enters into or otherwise acquires the debt instrument; or

(*2*) Payments denominated in or determined by reference to a currency that is hyperinflationary (as defined in §1.988–1(f)) during the taxable year, and the terms of the instrument provide for the adjustment of principal or interest payments in a manner that reflects hyperinflation. For example, a debt instrument providing for a variable interest rate based on local conditions and generally responding to changes in the local consumer price index will reflect hyperinflation.

(B) *Hyperinflationary deposit.* A hyperinflationary deposit is a demand or time deposit or similar instrument issued by a bank or other financial institution that provides for—

(*1*) Payments denominated in or determined by reference to a currency that is hyperinflationary (as defined in §1.988–1(f)) at the time the taxpayer enters into or otherwise acquires the deposit; or

(*2*) Payments denominated in or determined by reference to a currency that is hyperinflationary (as defined in §1.988–1(f)) during the taxable year, and the terms of the deposit provide for the adjustment of the deposit amount or interest payments in a manner that reflects hyperinflation.

(vii) *Interaction with other provisions*—(A) *Interest allocation rules.* In determining the amount of interest expense, this

paragraph (b)(15) applies before §§1.861–9T through 1.861–12T, and 1.882–5.

(B) *DASTM.* With respect to a qualified business unit that uses the United States dollar approximate separate transactions method of accounting described in §1.985–3, paragraph (b)(15)(i) of this section does not apply.

(C) *Interaction with section 988(a)(3)(C).* Section 988(a)(3)(C) does not apply to a debt instrument subject to the rules of paragraph (b)(15)(i) of this section.

(D) *Hedging rules.* To the extent §1.446–4 or 1.988–5 apply, the rules of paragraph (b)(15)(i) of this section will not apply. This paragraph (b)(15)(vii)(D) does not apply if the application of §1.988–5 results in hyperinflationary debt instrument or deposit described in paragraph (b)(15)(vi)(A) or (B) of this section.

(viii) *Effective date.* This paragraph (b)(15) applies to transactions entered into after February 14, 2000**.**

* * * * *

(d) * * *

(5) *Hyperinflationary contracts*—(i) *In general.* If a taxpayer acquires or otherwise enters into a hyperinflationary contract (as defined in paragraph (d)(5)(ii) of this section) that has payments to be made or received that are denominated in (or determined by reference to) a nonfunctional currency of the taxpayer, then the taxpayer shall realize exchange gain or loss with respect to such contract for its taxable year determined by reference to the change in exchange rates between—

(A) The later of the first day of the taxable year, or the date the contract was acquired or entered into; and

(B) The earlier of the last day of the taxable year, or the date the contract is disposed of or otherwise terminated.

(ii) *Definition of hyperinflationary contract.* A hyperinflationary contract is a contract described in paragraph (d)(1) of this section that provides for payments denominated in or determined by reference to a currency that is hyperinflationary (as defined in §1.988–1(f)) at the time the taxpayer acquires or otherwise enters into the contract.

(iii) *Interaction with other provisions*—(A) *DASTM.* With respect to a qualified business unit that uses the United States dollar approximate separate transactions method of accounting described in §1.985–3, this paragraph (d)(5) does not apply.

(B) *Hedging rules.* To the extent §1.446–4 or 1.988–5 apply, this paragraph (d)(5) does not apply.

(C) *Adjustment for subsequent transactions.* Proper adjustments must be made in the amount of any gain or loss subsequently realized for gain or loss taken into account by reason of this paragraph (d)(5).

(iv) *Effective date.* This paragraph (d)(5) is applicable to transactions acquired or otherwise entered into after February 14, 2000**.**

(e) ***

(3) ***

(iv) *Coordination with §1.446–3(g)(4) regarding swaps with significant nonperiodic payments.* The rules of §1.446–3(g)(4) apply to any currency swap with a significant nonperiodic payment. Section 1.446–3(g)(4) applies before this paragraph (e)(3). Thus, if §1.446–3(g)(4) applies, currency gain or loss may be realized on the loan. This paragraph (e)(3)(iv) applies to transactions entered into after February 14, 2000**.**

* * * * *

(7) *Special rules for currency swap contracts in hyperinflationary currencies*—(i) *In general.* If a taxpayer enters into a hyperinflationary currency swap (as defined in paragraph (e)(7)(iv) of this section), then the taxpayer realizes exchange gain or loss for its taxable year with respect to such instrument determined by reference to the change in exchange rates between —

(A) The later of the first day of the taxable year, or the date the instrument was entered into (by the taxpayer); and

(B) The earlier of the last day of the taxable year, or the date the instrument is disposed of or otherwise terminated.

(ii) *Adjustment to principal or basis.* Proper adjustments are made in the amount of any gain or loss subsequently realized for gain or loss taken into account by reason of this paragraph (e)(7).

(iii) *Interaction with DASTM.* With respect to a qualified business unit that uses the United States dollar approximate separate transactions method of accounting described in §1.985–3, this paragraph (e)(7) does not apply.

(iv) *Definition of hyperinflationary currency swap contract.* A hyperinflationary currency swap contract is a currency swap contract that provides for—

(A) Payments denominated in or determined by reference to a currency that is hyperinflationary (as defined in §1.988–1(f)) at the time the taxpayer enters into or otherwise acquires the currency swap; or

(B) Payments that are adjusted to take into account the fact that the currency is hyperinflationary (as defined in §1.988–1(f)) during the current taxable year. A currency swap contract that provides for periodic payments determined by reference to a variable interest rate based on local conditions and generally responding to changes in the local consumer price index is an example of this latter type of currency swap contract.

(v) *Special effective date for nonfunctional hyperinflationary currency swap contracts.* Paragraph (e)(7) applies to transactions entered into after February 14, 2000**.**

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved December 13, 1999.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on January 12, 2000, 8:45 a.m., and published in the issue of the Federal Register for January 13, 2000, 65 F.R. 2026)

Section 6104.—Publicity of Information Required From Certain Exempt Organizations and Certain Trusts

26 CFR 1.6104(d)–1: Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations.

T.D. 8861

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 301 and 602

Private Foundation Disclosure Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend the regulations relating to the public disclosure requirements described in section 6104(d) of the Internal Revenue Code. These final regulations implement changes made by the Tax and Trade Relief Extension Act of 1998, which extended to private foundations the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. These final regulations provide guidance for private foundations required to make copies of applications for recognition of exemption and annual information returns available for public inspection and to comply with requests for copies of those documents.

DATES: *Effective Date*: These regulations are effective March 13, 2000.

Applicability date. Except as provided below, these regulations are applicable to private foundations on or after March 13, 2000. These regulations are not applicable to any private foundation annual information return the due date for which (determined with regard to any extension of time for filing) is before March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Michael B. Blumenfeld, (202) 622-6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545-1655. Responses to these collections of information are mandatory.

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

The estimated average annual burden per respondent/recordkeeper is 30 minutes.

Comments on the accuracy of this burden estimate and suggestions for reducing the burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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

Background

This document amends §§301.6104(d)–1 through 301.6104(d)–5 of the Procedure and Administration Regulations (26 CFR Part 301) relating to the section 6104(d) public disclosure rules applicable to tax-exempt organizations (organizations described in section 501(c) or (d) and exempt from taxation under section 501(a)) and certain nonexempt charitable trusts and nonexempt private foundations referenced in section 6033(d). The amendments remove existing §301.6104(d)–1 (relating to public inspection of private foundation annual information returns). The amendments also revise §§301.6104(d)–2 through 301.6104(d)–5 to apply the provisions to all tax-exempt organizations, nonexempt charitable trusts described in section 4947(a)(1) and nonexempt private foundations. In addition, the amendments redesignate existing §§301.6104(d)–2 through 301.6104(d)–5 as §§301.6104(d)–0 through 301.6104(d)–3, respectively.

Description of Current Law Disclosure Requirements Applicable to Private Foundations

Section 6104(d), as in effect prior to the effective date of the Tax and Trade Relief Extension Act of 1998 (Division J of H.R. 4328, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999)(Public Law 105-277, 112 Stat 2681) (with respect to private foundations), requires a private foundation to make its annual information returns available for public inspection at its principal office during regular business hours for a period of 180 days after the foundation publishes notice of the availability of its return. A private foundation must publish the notice not later than the due date of the return (determined with regard to any extension of time for filing) in a newspaper having general circulation in the county in which the principal office of the foundation is located. Section 6104(e), as in effect prior to the effective date of the Tax and Trade Relief Extension Act of 1998 (with respect to private foundations), requires a private foundation to allow public inspection of the foundation's application for recognition of exemption at the foundation's principal office (and certain regional or district offices). Section 6104(e) also requires a private foundation to provide copies of its exemption application upon request. The requirement to provide copies of an exemption application upon request becomes effective, however, only after the Secretary of the Treasury issues final regulations applicable to private foundations that describe how the requirement is inapplicable if the private foundation makes its exemption application widely available or obtains an IRS determination that a particular request is part of a harassment campaign.

Amendments Made by the Tax and Trade Relief Extension Act of 1998

The Tax and Trade Relief Extension Act of 1998 was enacted on October 21, 1998. Among its provisions, it amended section 6104(e) of the Code to apply to private foundations the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. In addition, the Tax and Trade Relief Extension Act of 1998 repealed existing section 6104(d), and redesignated section 6104(e), as amended, as new section 6104(d). Section 6104(d), as amended by the Tax and Trade Relief Extension Act of 1998, requires each tax-exempt organization, including one that is a private foundation, to allow public inspection at its principal office (and at certain regional or district offices) and to comply with requests, made either in person or in writing, for copies of the organization's application for recognition of exemption and the organization's three most recent annual information returns. Congress also intended that nonexempt charitable trusts described in section 4947(a)(1) and nonexempt private foundations comply with the expanded public disclosure requirements, just as the infor-

mation reporting requirements of section 6033, pursuant to section 6033(d), apply to these entities. See Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 1998 (JCS–6–98), November 24, 1998, at 242, fn. 102.

The Tax and Trade Relief Extension Act of 1998 amendments apply to requests made after the later of December 31, 1998, or the 60th day after the Secretary of the Treasury issues final regulations referred to in section 6104(d)(4) (relating to when documents are made widely available and when a particular request is considered part of a harassment campaign). On April 9, 1999, the IRS published T.D. 8818, 1999–17 I.R.B. 3, in the **Federal Register** (64 FR 17279) final regulations under section 6104(d) applicable to tax- exempt organizations other than private foundations. Accordingly, section 6104(d), as amended by the Tax and Trade Relief Extension Act of 1998, became effective with respect to tax-exempt organizations other than private foundations on June 8, 1999.

On August 10, 1999, the IRS published a notice of proposed rulemaking, REG–121946–98, 1999–36 I.R.B. 403, under section 6104(d) in the **Federal Register** (64 FR 43324) that extends the recently-published final regulations under section 6104(d) to apply to private foundations and modifies those final regulations in several respects. The IRS received a few comments on the proposed regulations. No public hearing on the regulations was requested or held. After consideration of all the comments, the proposed regulations are adopted with minor clarifying modifications by this Treasury Decision. The provisions and significant comments are discussed below.

Explanation of the Provisions

These final regulations amend the final regulations (T.D. 8818) under section 6104(d) that were published in the **Federal Register** (64 FR 17279) on April 9, 1999 (the April 9, 1999 final regulations). The amendments clarify that the term *annual information return* includes any return that is required to be filed under section 6033. For a private foundation, these returns include Form 990-PF and Form 4720. The amendments clarify that, unlike other tax-exempt organizations, a private foundation must disclose to the general public the names and addresses of its contributors, consistent with section 6104(d)(3). The amendments also clarify that, for purposes of section 6104(d), the terms *tax-exempt organization* and *private foundation* include nonexempt private foundations and nonexempt charitable trusts described in section 4947(a)(1) that are subject to the information reporting requirements of section 6033. Finally, the amendments remove existing §301.6104(d)–1 and redesignate existing §§301.6104–2 through 301.6104(d)–5, as §§301.6104(d)–0 through 301.6104(d)–3, respectively.

Until March 13, 2000, private foundations remain subject to section 6104(d) and section 6104(e), as in effect prior to the Tax and Trade Relief Extension Act of 1998, and existing §301.6104(d)–1. Thereafter, private foundations are subject to the public inspection requirements of section 6104(d), as in effect prior to the Tax and Trade Relief Extension Act of 1998, and existing §301.6104(d)–1 with respect to any annual information return the due date (determined with regard to any extension of time for filing) for which is prior to March 13, 2000.

Summary of Comments

One commenter suggested another method to satisfy the widely available exception to the requirement that a private foundation provide a copy of its applicable documents upon request. The commenter would permit a private foundation to satisfy the widely available exception by (1) filing copies of its documents with a state agency that, in turn, makes the documents available for public inspection, and (2) publishing a notice in a newspaper of general circulation stating where the documents are available. The Tax and Trade Relief Extension Act of 1998 repealed the requirement (in former section 6104(d)) that private foundations publish notice of the availability of their annual information returns with respect to annual information returns due after the effective date of these final regulations. The Act extended the same public disclosure requirements that apply to all other tax-exempt organizations to private foundations, including the widely available exception. The proposed regulations specify that a private foundation satisfies the widely available exception by posting its documents on the World Wide Web as described in the April 9, 1999 final regulations. After carefully considering this comment, the IRS and the Treasury Department have concluded that providing copies of the applicable documents to a state agency and publishing notice would not make those documents widely available. We reached our conclusion because the method suggested by the commenter could impose a substantial inconvenience to members of the public. Therefore, the IRS and the Treasury Department did not adopt this suggestion.

A few commenters asked that these final regulations not require private foundations to disclose to the general public the identities of their contributors. Section 6104(d) requires public disclosure of all the information contained on an exemption application and an annual information return filed with the IRS, unless the information is specifically excepted from disclosure. Section 6104(d)(3) specifically excepts from disclosure the names and addresses of any contributor to an organization which is not a private foundation. By its terms, this exception does not apply to private foundations. The IRS and the Treasury Department believe the rule of the proposed regulation is consistent with the statute and Congressional intent and, therefore, did not change this provision.

One commenter asked that these final regulations clarify how the disclosure requirements apply to a supporting organization described in section 509(a)(3). Section 509(a) provides that an organization described in section 501(c)(3) is a private foundation if it does not meet the requirements of section 509(a)(1), (2), (3), or (4). Therefore, an organization that is described in section 501(c)(3) and classified as a supporting organization under section 509(a)(3) is not a private foundation. The disclosure requirements under section 6104(d) apply to supporting organizations described in section 509(a)(3) in the same manner as they apply to all other tax-exempt organizations that are not private foundations. The proposed regulations define the terms *tax-exempt organization* and *private foundation* consistent with the applicable statutory provisions, and the IRS and the Treasury Department have determined that further regulatory clarification is not necessary in this regard.

Another commenter expressed concern

that some private foundations may not have copies of their exemption applications. This commenter suggested that these final regulations only require private foundations formed after 1990 to disclose their exemption applications. Since July 15, 1987, a tax-exempt organization, including one that is a private foundation, has been required under section 6104 to make its exemption application available for public inspection. See section 10702(b) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) and Notice 88–120 (1988–2 C.B. 454). Under the proposed regulations, a private foundation that filed its exemption application before July 15, 1987 is required to make available for public inspection a copy of its application only if it had a copy of its application on July 15, 1987. Thus, these final regulations do not change this provision of the proposed regulations.

One commenter stated that the applicable date in the proposed regulations, which would eliminate the requirement that private foundations publish notice of the availability of their annual information returns, is inconsistent with the effective date specified in the House Committee Report to the Tax and Trade Relief Extension Act of 1998 (H.R. Rep. No. 105–817). This commenter requested that the final regulations add a rule that prevents the IRS from asserting a late filing penalty against a private foundation whose return is rejected by the IRS because the foundation filed the return on or after June 8, 1999 (the effective date of the April 9, 1999 final regulations) without proof that it satisfied the publication of notice requirement. Section 6104(d), as in effect prior to the effective date of the Tax and Trade Relief Extension Act of 1998, provides that a private foundation must publish a notice of the availability of its return not later than the due date of the return (determined with regard to any extension of time for filing). Section 1.6033–3(b) of the regulations requires a private foundation to attach a copy of the notice to its return.

The Tax and Trade Relief Extension Act of 1998 repealed the publication of notice requirement of section 6104(d) effective for private foundation annual information returns due after the later of December 31, 1998 or 60 days after the Treasury Department issues final regulations that explain how requested documents may be made widely available or when requests for documents are part of a harassment campaign. The April 9, 1999 final regulations do not apply to private foundations and, therefore, the issuance of those regulations did not trigger the repeal of the publication of notice requirement. Indeed, the April 9, 1999 final regulations stated explicitly that, until the IRS issues final regulations under section 6104(d) applicable to private foundations, private foundations continue to be governed by the existing § 301.6104(d)–1 requirements relating to public disclosure of private foundation annual information returns

The IRS and the Treasury Department believe the effective date of the repeal of the publication of notice requirement stated in the proposed regulations is consistent with both the statute and the legislative history. Further, the IRS and the Treasury Department believe it is important to retain one public disclosure standard for private foundations until another is finally adopted. Accordingly, the IRS and the Treasury Department did not modify these final regulations as suggested.

Finally, one commenter expressed concern that disclosure in some instances could adversely affect the charitable operations of some small operating private foundations that advance unpopular causes or desire to maintain a low profile. This commenter suggested that the final regulations should authorize the Secretary to grant a waiver from some or all of the disclosure requirements if a small operating foundation establishes that, without the waiver, its charitable operations could be adversely affected and it provides alternative methods of disclosure that enhance oversight and public accountability. Section 6104(d), however, does not authorize the Secretary to grant waivers except in the case of a harassment campaign determination. Moreover, all tax-exempt organizations have the option under the regulations of avoiding having to comply with requests for copies of documents by making such documents widely available on the Internet. Therefore, the IRS and the Treasury Department did not adopt this suggestion.

Effective Date

These final regulations are applicable to private foundations on March 13, 2000.

Special Analyses

It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the average time required to maintain and disclose the information required under these regulations is estimated to be 30 minutes for each private foundation. This estimate is based on the assumption that, on average, a private foundation will receive one request per year to inspect or provide copies of its application for tax exemption and its annual information returns. Approximately 0.1 percent of the private foundations affected by these regulations will be subject to the reporting requirements contained in the regulations. It is estimated that annually, approximately 65 private foundations will make their documents widely available by posting them on the Internet. In addition, it is estimated that annually, approximately 3 private foundations will file an application for a determination that they are the subject of a harassment campaign such that a waiver of the obligation to provide copies of their applications for tax exemption and their annual information returns is in the public interest. The average time required to complete, assemble and file an application describing a harassment campaign is expected to be 5 hours. Because applications for a harassment campaign determination will be filed so infrequently, they will have no effect on the average time needed to comply with the requirements in these regulations. In addition, a private foundation is allowed in these regulations to charge a reasonable fee for providing copies to requesters. Therefore, it is estimated that it will cost a private foundation less than $10 per year to comply with these regulations, which is not a significant economic impact. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Michael B. Blumenfeld, Office of Associate Chief Counsel (Employee Ben-

efits and Exempt Organizations), IRS. Other personnel from the IRS and Treasury Department also participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301–PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

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

Section 301.6104(d)–2 also issued under 26 U.S.C. 6104(d)(3);

Section 301.6104(d)–3 also issued under 26 U.S.C. 6104(d)(3); * * *

§301.6104(d)–1 [Removed]

Par. 2. Section 301.6104(d)–1 is removed.

§301.6104(d)–2 [Redesignated as §301.6104(d)–0]

Par. 3. Section 301.6104(d)–2 is redesignated as §301.6104(d)–0.

Par. 4. Newly designated §301.6104(d)–0 is revised to read as follows:

§301.6104(d)–0 Table of contents.

This section lists the major captions contained in §§301.6104(d)–1 through 301.6104(d)–3 as follows:

§301.6104(d)–1 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations.

(a) In general.
(b) Definitions.
(1) Tax-exempt organization.
(2) Private foundation.
(3) Application for tax exemption.
(i) In general.
(ii) No prescribed application form.
(iii) Exceptions.
(iv) Local or subordinate organizations.
(4) Annual information return.
(i) In general.
(ii) Exceptions.
(iii) Returns more than 3 years old.
(iv) Local or subordinate organizations.
(5) Regional or district offices.
(i) In general.
(ii) Site not considered a regional or district office.
(c) Special rules relating to public inspection.
(1) Permissible conditions on public inspection.
(2) Organizations that do not maintain permanent offices.
(d) Special rules relating to copies.
(1) Time and place for providing copies in response to requests made in person.
(i) In general.
(ii) Unusual circumstances.
(iii) Agents for providing copies.
(2) Request for copies in writing.
(i) In general.
(ii) Time and manner of fulfilling written requests.
(A) In general.
(B) Request for a copy of parts of document.
(C) Agents for providing copies.
(3) Fees for copies.
(i) In general.
(ii) Form of payment.
(A) Request made in person.
(B) Request made in writing.
(iii) Avoidance of unexpected fees.
(iv) Responding to inquiries of fees charged.
(e) Documents to be provided by regional and district offices.
(f) Documents to be provided by local and subordinate organizations.
(1) Applications for tax exemption.
(2) Annual information returns.
(3) Failure to comply.
(g) Failure to comply with public inspection or copying requirements.
(h) Effective date.
(1) In general.
(2) Private foundation annual information returns.

§301.6104(d)–2 Making applications and returns widely available.

(a) In general.
(b) Widely available.
(1) In general.
(2) Internet posting.
(i) In general.
(ii) Transition rule.
(iii) Reliability and accuracy.
(c) Discretion to prescribe other methods for making documents widely available.
(d) Notice requirement.
(e) Effective date.

§301.6104(d)–3 Tax-exempt organization subject to harassment campaign.

(a) In general.
(b) Harassment.
(c) Special rule for multiple requests from a single individual or address.
(d) Harassment determination procedure.
(e) Effect of a harassment determination.
(f) Examples.
(g) Effective date.

§301.6104(d)–3 [Redesignated as §301.6104(d)–1]

Par. 5. Section 301.6104(d)–3 is redesignated as §301.6104(d)–1.

Par. 6. Newly designated §301.6104(d)–1 is amended as follows:

1. Revise the section heading.

1a. Paragraph (a) is amended as follows:

a. Remove the language ", other than a private foundation (as defined in paragraph (b)(2) of this section)," from the first sentence.

b. Remove the language ", other than a private foundation," from the second sentence.

c. Remove the language "§§301.6104(d)–4 and 301.6104(d)–5" from the fourth sentence and add "§§301.6104(d)–2 and 301.6104(d)–3" in its place.

2. In paragraph (b) introductory text, remove the language "§§301.6104(d)–4 and 301.6104(d)–5" and add "§§301.6104(d)–2 and 301.6104(d)–3" in its place.

3. In paragraph (b)(1), add a sentence at the end of the paragraph.

4. In paragraph (b)(2), add the language "or a nonexempt charitable trust described in section 4947(a)(1) or a nonexempt private foundation subject to the information reporting requirements of section 6033 pursuant to section 6033(d)" at the end of the sentence.

5. In paragraph (b)(3)(iii)(B), remove the word "or" at the end of the paragraph.

6. Redesignate paragraph (b)(3)(iii)(C) as paragraph (b)(3)(iii)(D) and add a new paragraph (b)(3)(iii)(C).

7. In paragraph (b)(4)(i), remove the last two sentences and add three sentences in their place.

8. Paragraph (b)(4)(ii) is amended as follows:

a. Remove the language ", and the return of a private foundation" from the first sentence.

b. Revise the last sentence.

9. Revise paragraph (h).

The revisions and additions read as follows:

§301.6104(d)–1 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations.

* * * * *

(b) * * *

(1) * * * The term tax-exempt organization also includes any nonexempt charitable trust described in section 4947(a)(1) or nonexempt private foundation that is subject to the reporting requirements of section 6033 pursuant to section 6033(d).

* * * * *

(3)* * *

(iii) * * *

(C) In the case of a tax-exempt organization other than a private foundation, the name and address of any contributor to the organization; or

* * * * *

(4) * * * (i) * * * Returns filed pursuant to section 6033 include Form 990, Return of Organization Exempt From Income Tax, Form 990-PF, Return of Private Foundation, or any other version of Form 990 (such as Forms 990-EZ or 990-BL, except Form 990-T) and Form 1065. Each copy of a return must include all information furnished to the Internal Revenue Service on the return, as well as all schedules, attachments and supporting documents. For example, in the case of a Form 990, the copy must include Schedule A of Form 990 (containing supplementary information on section 501(c)(3) organizations), and those parts of the return that show compensation paid to specific persons (currently, Part V of Form 990 and Parts I and II of Schedule A of Form 990).

(ii) * * * In the case of a tax-exempt organization other than a private foundation, the term *annual information return* does not include the name and address of any contributor to the organization.

* * * * *

(h) *Effective date*–(1) *In general.* For a tax-exempt organization, other than a private foundation, this section is applicable June 8, 1999. For a private foundation, this section is applicable (except as provided in paragraph (h)(2) of this section) beginning March 13, 2000.

(2) *Private foundation annual information returns*. This section does not apply to any private foundation return the due date for which (determined with regard to any extension of time for filing) is before the applicable date for private foundations specified in paragraph (h)(1) of this section.

§301.6104(d)–4 [Redesignated as §301.6104(d)–2]

Par. 7. Section 301.6104(d)–4 is redesignated as §301.6104(d)–2.

Par. 8. Newly designated §301.6104(d)–2 is amended as follows:

1. In paragraph (a), remove the language "§301.6104(d)–3(a)" from each place it appears and add "§301.6104(d)–1(a)" in each place, respectively.

2. Revise paragraph (e).

The revision reads as follows:

§301.6104(d)–2 Making applications and returns widely available.

* * * * *

(e) *Effective date.* For a tax-exempt organization, other than a private foundation, this section is applicable June 8, 1999. For a private foundation, this section is applicable beginning March 13, 2000.

§301.6104(d)–5 [Redesignated as §301.6104(d)–3]

Par. 9. Section 301.6104(d)–5 is redesignated as §301.6104(d)–3.

Par. 10. Newly designated §301.6104(d)–3 is amended as follows:

1. In paragraph (a), remove the language "§301.6104(d)–3(a)" and add "§301.6104(d)–1(a)" in its place.

2. Revise paragraph (g).

The revision reads as follows:

§301.6104(d)–3 Tax-exempt organization subject to harassment campaign.

* * * * *

(g) *Effective date.* For a tax-exempt organization, other than a private foundation, this section is applicable June 8, 1999. For a private foundation, this section is applicable beginning March 13, 2000.

PART 602–OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 11. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 12. In §602.101, paragraph (b) is amended by removing the entries for 301.6104(d)–4 and 301.6104(d)–5, by revising the entries for 301.6104(d)–1 and 301.6104(d)–3, and adding a new entry for 301.6104(d)–2 in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved December 23, 1999.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on January 12, 2000, 8:45 a.m., and published in the issue of the Federal Register for January 13, 2000, 65 F.R. 2030)

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.6104(d)–1	1545-1655
301.6104(d)–2	1545-1655
301.6104(d)–3	1545-1655
* * * * *	

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, sections 66, 6015.)

Rev. Proc. 2000–15

SECTION 1. PURPOSE

This revenue procedure provides guidance for taxpayers seeking equitable relief from federal tax liability under § 6015(f) or 66(c) of the Internal Revenue Code (a "requesting spouse"). Section 4.01 of this revenue procedure provides the threshold conditions that must be satisfied for any request for equitable relief to be considered. Section 4.02 of this revenue procedure sets forth the conditions under which relief under § 6015(f) will ordinarily be granted. Section 4.03 of this revenue procedure provides a partial list of factors to be considered in determining whether it would be inequitable to hold a requesting spouse jointly and severally liable for a liability that was properly reported but not paid where the conditions of section 4.02 are not met, or for a deficiency. The factors in section 4.03 will also be used to determine whether equitable relief should be granted under § 66(c).

SECTION 2. BACKGROUND

.01 Section 6013(d)(3) provides that married taxpayers who file a joint return under § 6013 will be jointly and severally liable for the tax arising from that return. For purposes of § 6013(d)(3), and this revenue procedure, the term "tax" includes additions to tax, interest, and penalties. *See* §§ 6601(e)(1) and 6665(a)(2).

.02 Section 3201(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, 112 Stat.742 (RRA), enacted § 6015 of the Code, which provides relief in certain circumstances from the joint and several liability imposed by § 6013(d)(3). Sections 6015(b) and 6015(c) specify two sets of circumstances under which relief from joint and several liability is available. Where relief is not available under § 6015(b) or 6015(c), § 6015(f) authorizes the Secretary to grant equitable relief if, taking into account all the facts and circumstances, the Secretary determines that it is inequitable to hold a requesting spouse liable for any unpaid tax or any deficiency (or any portion of either). Section 3201(b) of RRA amended § 66(c) to add an equitable relief provision similar to § 6015(f). Section 66(c) applies to married individuals with community property income, and provides certain conditions under which an individual may be relieved of separate return liability for items of community income attributable to the individual's spouse. The enactment of § 6015 and the amendment of § 66(c) are effective with respect to any liability for tax arising after July 22, 1998, and any liability for tax arising on or before July 22, 1998, that is unpaid on that date.

.03 Under § 6015(b), a requesting spouse may elect relief from joint and several liability if the following five conditions are met: (1) a joint return was filed; (2) on the return there was an understatement of tax attributable to erroneous items of the spouse with whom the requesting spouse filed the return ("nonrequesting spouse"); (3) the requesting spouse establishes that in signing the return, the requesting spouse had no knowledge or reason to know that there was an understatement of tax; (4) taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for the understatement; and (5) the requesting spouse elects the application of § 6015(b) no later than two years after the date of the first collection activity after July 22, 1998, with respect to the requesting spouse. If all five conditions would be met except for the fact that the requesting spouse had no knowledge or reason to know of only a portion of the understatement, then the requesting spouse may be granted relief to the extent of that portion of the understatement.

.04 Under § 6015(c), a requesting spouse may elect to allocate a deficiency if the following four conditions are met: (1) a joint return was filed; (2) at the time of the election, the requesting spouse is no longer married to, is legally separated from, or has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date the election was filed; (3) the requesting spouse elects the application of § 6015(c) no later than two years after the date of the first collection activity after July 22, 1998, with respect to the requesting spouse; and (4) the deficiency remains unpaid. Relief under § 6015(c) is subject to several limitations. First, an election under § 6015(c) is invalid if the Service establishes that assets were transferred between the requesting spouse and the nonrequesting spouse as part of a fraudulent scheme (and § 6013(d)(3) shall apply to the joint return). Second, relief is not available to the extent that the Secretary demonstrates that the requesting spouse had actual knowledge of an item giving rise to a deficiency at the time the return was signed. Third, relief will only be available to the extent that the liability exceeds the value of any disqualified assets (as defined in § 6015(c)(4)(B)) transferred to the requesting spouse by the nonrequesting spouse.

.05 Section 6015 provides for relief only from joint and several liability arising from a joint return. If an individual signs a joint return under duress, the signature is not valid and a joint return is not made. The individual is not jointly and severally liable for liabilities arising from such a return. Therefore, § 6015 does not apply.

.06 Under both §§ 6015(b) and 6015(c), relief is available only from proposed or assessed deficiencies. Neither § 6015(b) nor § 6015(c) authorizes relief from liabilities that were properly reported on the return but not paid. However, equitable relief under § 6015(f) or 66(c) may be available for such liabilities. The legislative history of the RRA indicates that Congress intended for the Secretary to exercise discretion in granting equitable relief when a requesting spouse "does not know, and had no reason to know, that funds intended for the payment of tax were instead taken by the other spouse for such other spouse's benefit." H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 254 (1998). Congress also intended for the Secretary to exercise the equitable relief authority under § 6015(f) in other situations where, "taking into account all the facts and circumstances, it is inequitable to hold an individual liable for all or part of any unpaid tax or deficiency arising from a joint return." *Id.*

.07 Notice 98–61, 1998–51 I.R.B. 13 (Dec. 21, 1998), provided interim guidance to taxpayers seeking equitable relief under § 6015(f) or 66(c). In Notice 98–61, the Service and Treasury Department requested comments from the public by April 30, 1999, regarding the interim guidelines. Notice 99–29, 1999–21 I.R.B. 8 (May 24, 1999), extended the deadline for submitting comments on Notice 98–61 to June 30, 1999.

SECTION 3. SCOPE

This revenue procedure applies to a spouse who requests either equitable relief from joint and several liability under § 6015(f), or relief from separate liability under § 66(c) that arises due to the operation of community property law, with respect to any liability for tax arising after July 22, 1998, or any liability for tax arising on or before July 22, 1998, that was unpaid on that date.

SECTION 4. GENERAL CONDITIONS FOR RELIEF

.01 *Eligibility to be considered for equitable relief.* All the following threshold conditions must be satisfied before the Service will consider a request for equitable relief under § 6015(f). In addition, with the exception of conditions (1) and (2), all of the following threshold conditions must be satisfied before the Service will consider a claim for equitable relief under § 66(c). The threshold conditions are as follows:

(1) The requesting spouse filed a joint return for the taxable year for which relief is sought;

(2) Relief is not available to the requesting spouse under § 6015(b) or 6015(c);

(3) The requesting spouse applies for relief no later than two years after the date of the Service's first collection activity after July 22, 1998, with respect to the requesting spouse;

(4) Except as provided in the next sentence, the liability remains unpaid. A requesting spouse is eligible to be considered for relief in the form of a refund of liabilities for: (a) amounts paid on or after July 22, 1998, and on or before April 15, 1999; and (b) installment payments, made after July 22, 1998, pursuant to an installment agreement entered into with the Service and with respect to which an individual is not in default, that are made after the claim for relief is requested;

(5) No assets were transferred between the spouses filing the joint return as part of a fraudulent scheme by such spouses;

(6) There were no disqualified assets transferred to the requesting spouse by the nonrequesting spouse. If there were disqualified assets transferred to the requesting spouse by the nonrequesting spouse, relief will be available only to the extent that the liability exceeds the value of such disqualified assets. For this purpose, the term "disqualified asset" has the meaning given such term by § 6015(c)(4)(B); and

(7) The requesting spouse did not file the return with fraudulent intent.

A requesting spouse satisfying all the applicable threshold conditions set forth above may be relieved of all or part of the liability under § 6015(f) or 66(c), if, taking into account all the facts and circumstances, the Service determines that it would be inequitable to hold the requesting spouse liable for such liability.

.02 *Circumstances under which equitable relief under § 6015(f) will ordinarily be granted.*

(1) In cases where a liability reported on a joint return is unpaid, equitable relief under § 6015(f) will ordinarily be granted (subject to the limitations of paragraph (2) below) in cases where all of the following elements are satisfied:

(a) At the time relief is requested, the requesting spouse is no longer married to, or is legally separated from, the nonrequesting spouse, or has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date relief was requested;

(b) At the time the return was signed, the requesting spouse had no knowledge or reason to know that the tax would not be paid. The requesting spouse must establish that it was reasonable for the requesting spouse to believe that the nonrequesting spouse would pay the reported liability. If a requesting spouse would otherwise qualify for relief under this section, except for the fact that the requesting spouse had no knowledge or reason to know of only a portion of the unpaid liability, then the requesting spouse may be granted relief only to the extent that the liability is attributable to such portion; and

(c) The requesting spouse will suffer economic hardship if relief is not granted. For purposes of this section, the determination of whether a requesting spouse will suffer economic hardship will be made by the Commissioner or the Commissioner's delegate, and will be based on rules similar to those provided in § 301.6343–1(b)(4) of the Regulations on Procedure and Administration.

(2) Relief under this section 4.02 is subject to the following limitations:

(a) If the return is or has been adjusted to reflect an understatement of tax, relief will be available only to the extent of the liability shown on the return prior to any such adjustment; and

(b) Relief will only be available to the extent that the unpaid liability is allocable to the nonrequesting spouse.

.03 *Factors for determining whether to grant equitable relief.* This section 4.03 applies to requesting spouses who filed separate returns in community property states, request relief under § 66(c), and satisfy the applicable threshold conditions of section 4.01. This section 4.03 also applies to requesting spouses who filed joint returns and satisfy the threshold conditions of section 4.01, but do not qualify for relief under section 4.02. The Secretary may grant equitable relief under § 6015(f) or 66(c) if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for all or part of the unpaid liability or deficiency. The following is a partial list of the positive and negative factors that will be taken into account in determining whether to grant full or partial equitable relief under § 6015(f) or 66(c). No single factor will be determinative of whether equitable relief will or will not be granted in any particular case. Rather, all factors will be considered and weighed appropriately. The list is not intended to be exhaustive.

(1) *Factors weighing in favor of relief.* The factors weighing in favor of relief include, but are not limited to, the following:

(a) *Marital status.* The requesting spouse is separated (whether legally separated or living apart) or divorced from the nonrequesting spouse.

(b) *Economic hardship.* The requesting spouse would suffer economic

hardship (within the meaning of section 4.02(1)(c) of this revenue procedure) if relief from the liability is not granted.

(c) *Abuse*. The requesting spouse was abused by the nonrequesting spouse, but such abuse did not amount to duress.

(d) *No knowledge or reason to know.* In the case of a liability that was properly reported but not paid, the requesting spouse did not know and had no reason to know that the liability would not be paid. In the case of a liability that arose from a deficiency, the requesting spouse did not know and had no reason to know of the items giving rise to the deficiency.

(e) *Nonrequesting spouse's legal obligation*. The nonrequesting spouse has a legal obligation pursuant to a divorce decree or agreement to pay the outstanding liability. This will not be a factor weighing in favor of relief if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonrequesting spouse would not pay the liability.

(f) *Attributable to nonrequesting spouse*. The liability for which relief is sought is solely attributable to the nonrequesting spouse.

(2) *Factors weighing against relief.* The factors weighing against relief include, but are not limited to, the following:

(a) *Attributable to the requesting spouse*. The unpaid liability or item giving rise to the deficiency is attributable to the requesting spouse.

(b) *Knowledge, or reason to know*. A requesting spouse knew or had reason to know of the item giving rise to a deficiency or that the reported liability would be unpaid at the time the return was signed. This is an extremely strong factor weighing against relief. Nonetheless, when the factors in favor of equitable relief are unusually strong, it may be appropriate to grant relief under § 6015(f) in limited situations where a requesting spouse knew or had reason to know that the liability would not be paid, and in very limited situations where the requesting spouse knew or had reason to know of an item giving rise to a deficiency.

(c) *Significant benefit.* The requesting spouse has significantly benefitted (beyond normal support) from the unpaid liability or items giving rise to the deficiency. *See* § 1.6013–5(b).

(d) *Lack of economic hardship*. The requesting spouse will not experience economic hardship (within the meaning of section 4.02(1)(c) of this revenue procedure) if relief from the liability is not granted.

(e) *Noncompliance with federal income tax laws*. The requesting spouse has not made a good faith effort to comply with federal income tax laws in the tax years following the tax year or years to which the request for relief relates.

(f) *Requesting spouse's legal obligation. The requesting spouse* has a legal obligation pursuant to a divorce decree or agreement to pay the liability.

SECTION 5. PROCEDURE

A requesting spouse seeking equitable relief under § 6015(f) or 66(c) must file Form 8857, Request for Innocent Spouse Relief (and Separation of Liability, and Equitable Relief), or other similar statement signed under penalties of perjury, within 2 years of the first collection activity against the requesting spouse. If a requesting spouse has already filed an application for relief under § 6015(b) or 6015(c), the Service will consider whether equitable relief under § 6015(f) is appropriate for the portion of the liability for which relief under § 6015(b) or § 6015(c) is not available. A subsequent filing of a request for equitable relief under § 6015(f) is not necessary.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Notice 98–61 is modified and, as modified, is superseded.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective on January 18, 2000.

DRAFTING INFORMATION

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

Closing Agreements Concerning Variable Annuity Contracts

Notice 2000–9

PURPOSE

This notice reminds issuers of variable annuity contracts that the special rules of § 817(h)(3) of the Internal Revenue Code and § 1.817–5(h)(3) of the Income Tax Regulations do not apply in determining whether the investments of a segregated asset account with respect to those contracts are adequately diversified for purposes of § 817(h). For a limited period of time, this notice also permits issuers of failed variable annuity contracts based on one or more accounts that would have satisfied the special rules for accounts with respect to variable life insurance contracts to obtain the relief described in § 1.817–5(a)(2) through a reduced payment amount.

BACKGROUND

Section 817(h) of the Code provides that a variable contract (other than a pension plan contract) based on a segregated asset account shall not be treated as an annuity, endowment, or life insurance contract if the investments made by the account are not adequately diversified in accordance with regulations prescribed by the Secretary. Section 1.817–5(a)(1) of the regulations provides generally that a variable contract is not treated as an annuity, endowment, or life insurance contract for any calendar quarter period in which the investments of an account on which the contract is based are not adequately diversified. Thus, any income on the contract within the meaning of § 7702(g) is treated as ordinary income received or accrued by the contract holder during that period and any subsequent period.

Under § 1.817–5(b)(1), the investments of a segregated asset account are considered adequately diversified for purposes of § 817(h) only if–

(1) No more than 55% of the value of the total assets of the account is represented by any one investment;

(2) No more than 70% of the value of the total assets of the account is represented by

any two investments;

(3) No more than 80% of the value of the total assets of the account is represented by any three investments; and

(4) No more than 90% of the value of the total assets of the account is represented by any four investments.

In addition, § 817(h)(2) and § 1.817–5(b)(2) provide a safe harbor under which the investments of a segregated asset account are considered adequately diversified if the account meets the requirements of § 851(b)(3), and no more than 55% of the value of the total assets of the account is attributable to cash, cash items, government securities, and securities of other regulated investment companies. For purposes of testing diversification, all securities of the same issuer are treated as a single investment, and each government agency or instrumentality is treated as a separate issuer. *See* § 1.817–5(b)(1)(ii).

Under § 817(h)(3), the investments made by a segregated asset account with respect to a variable life insurance contract are treated as adequately diversified to the extent the account is invested in securities issued by the United States Treasury. Section 1.817–5(b)(3) provides alternative diversification requirements for a segregated asset account invested in United States Treasury securities. Both § 817(h)(3) and § 1.817–5(b)(3) apply only to segregated asset accounts with respect to variable life insurance contracts; neither applies to such accounts with respect to variable annuity contracts.

Under § 1.817–5(a)(2), the investments of an inadequately diversified segregated asset account are nevertheless treated as diversified if three requirements are satisfied. First, the issuer or holder of a variable contract based on the account must show that the failure to satisfy the diversification requirements was inadvertent. Section 1.817–5(a)(2)(i). Second, the account must satisfy the diversification requirements within a reasonable time after discovery of such failure. Section 1.817–5(a)(2)(ii). Third, the issuer or holder of the variable contract must agree to make such adjustments or pay such amounts as may be required by the Commissioner with respect to the period or periods during which the investments of the account were not diversified. The amount required to be paid by the Commissioner shall be based upon the tax that would have been owed by the contract holders if they were treated as receiving the income on the contract for the periods during which one or more accounts were not adequately diversified. Section 1.817–5(a)(2)(iii).

Rev. Rul. 91–17, 1991–1 C.B. 190, provides that if a variable contract does not satisfy the diversification requirements set forth in regulations under § 817(h), then the income on such contract is a nonperiodic distribution under what is now § 3405(e)(3). Thus, the insurance company is subject to certain recordkeeping, reporting, withholding and deposit obligations under §§ 3402, 3403, 3405, 6047, 6302 and 7501. In addition, if the company's failure to meet those obligations is not due to reasonable cause, the company could be subject to the penalties described in §§ 6651, 6652(e), 6652(h), 6656(a) and 6704.

Section 7121 authorizes the Secretary to enter into closing agreements relating to the internal revenue tax liability of a person. Rev. Proc. 92–25, 1992–1 C.B. 741, provides the procedure by which the issuer of a variable contract that fails to satisfy the requirements of § 817(h) may request the relief described in § 1.817–5(a)(2) of the regulations. That relief is in the form of a closing agreement pursuant to which the Internal Revenue Service and the issuer agree to treat the assets of the nondiversified account as adequately diversified for purposes of § 817(h) for the period or periods of nondiversification. For periods in which the highest rate specified in § 1 of the Code is no greater than 31 percent, the amount due from the issuer of a variable annuity contract under the closing agreement is the sum of–

(1) 20% of income on annuity contracts from which payments have not been made as of the end of the period; plus

(2) 15% of income on annuity contracts from which payments have been made as of the end of the period; plus

(3) any interest computed under § 6621(a)(2) of the Code as if the amounts computed under (1) and (2) were underpayments by the contract holders for their tax year(s) containing the period(s) of nondiversification.

The amount due from the issuer of a variable life insurance or endowment contract is the sum of–

(1) 28% of the income on the contracts; plus

(2) any interest computed under § 6621(a)(2) of the Code as if the amounts computed under (1) were underpayments by the contract holders for their tax year(s) containing the period(s) of nondiversification.

The Service has continued to exercise its authority under § 7121 and § 1.817–5(a)(2) to enter into closing agreements using these rates, even though the highest rate specified in § 1 now is greater than 31 percent. Except as provided below, it will do so until further notice.

The Service has become aware of situations in which segregated asset accounts with respect to variable annuity contracts satisfied the special rules of § 817(h)(3) and § 1.817–5(b)(3) that apply to accounts underlying variable life insurance contracts, but did not satisfy the general diversification requirements of § 1.817–5(b)(1) or (2).

SCOPE

This notice applies to any issuer of a variable annuity contract seeking relief under § 1.817–5(a)(2) of the regulations, if that contract failed to satisfy the diversification requirements of § 817(h) solely by reason of one or more inadequately diversified segregated asset accounts that would have satisfied the requirements of § 817(h)(3) and § 1.817–5(b)(3) if the contract been a variable life insurance contract.

PROCEDURE

An issuer requesting relief under this notice shall request a closing agreement under the terms and conditions of Rev. Proc. 92–25. In computing the amount due under the closing agreement, however, the following rates shall be substituted for the 20% and 15% rates provided in § 4.02(1)(A) and (B) of that procedure:

(1) 3.5%, if not more than 75% of the value of the

total assets of the account is represented by Treasury securities for the period or periods of nondiversification;

(2) 2.5%, if more than 75% but not more than 90% of the value of the total assets of the account is represented by Treasury securities for the period or periods of nondiversification; and

(3) 1.5%, if more than 90% of the value of the total assets of the account is represented by Treasury securities for the period or periods of nondiversification.

If a contract is based on more than one nondiversified segregated asset account, the rate shall be determined based on the account with the lowest percentage investment in Treasury securities. Likewise, if the segregated asset account(s) failed the requirements of § 1.817–5(b)(1) or (2) for more than one calendar quarter, the rate for all quarters shall be determined based on the quarter in which the account had the lowest percentage investment in Treasury securities.

EFFECTIVE DATE

This notice is effective January 13, 2000, the date this notice was made available to the public.

EXPIRATION DATE

This notice applies only to requests for closing agreement relief that are received on or before August 1, 2000. Requests received after that date must meet all of the requirements, including the payment amounts, set forth in Rev. Proc. 92–25.

DRAFTING INFORMATION

The principal author of this notice is Gary Geisler of the Office of the Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this notice, contact Mr. Geisler on (202) 622-3970 (not a toll-free call).

Comments on Items for Year 2000 Published Guidance Priority List

Notice 2000–10

The Department of Treasury and Internal Revenue Service request public comment about items that should be included in the Guidance Priority List for 2000.

IRS and Treasury's Office of Tax Policy use the Guidance Priority List (GPL) each year to identify and prioritize the tax issues that should be addressed through regulations, rulings, and other published administrative guidance. Public input is invited as part of the process of formulating the GPL to ensure that the agency's resources focus on the guidance items that are most important to taxpayers and tax administration.

No particular format is required for comments submitted in response to this Notice. However, it will be helpful for comments both to briefly describe the item that is recommended for inclusion on the GPL and to explain why there is a need for guidance. In addition, comments may present an analysis of how the issue should be resolved.

Please submit all comments by February 14, 2000. Written comments should be sent to:

Internal Revenue Service
Attn: CC:DOM:CORP:R
(Notice 2000–10)
Room 5228
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

or hand delivered between the hours of 8 a.m. and 5 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:DOM:CORP:R
(Notice 2000–10)
Room 5228
1111 Constitution Avenue, N.W.
Washington, D.C.

Alternatively, comments may be submitted electronically via e-mail to the following address:

Sharon.Y.Horn@M1.IRSCOUNSEL.TREAS.GOV

All comments will be available for public inspection and copying in their entirety.

For further information regarding this notice, contact David Schneider of the Office of Assistant Chief Counsel (Income Tax and Accounting) at (202) 622-4890 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Allocation of Partnership Debt

REG–103831–99

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to the allocation of nonrecourse liabilities by a partnership. The proposed regulations revise tier three of the three-tiered allocation structure contained in the current nonrecourse liability regulations, and also provide guidance regarding the allocation of a single nonrecourse liability secured by multiple properties. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by April 12, 2000. Requests to speak (with outlines of oral comments) at a public hearing scheduled for May 3, 2000, at 10 a.m., must be received by April 12, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–103831–99), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–103831–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Christopher Kelley, (202) 622-3070; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

lntroduction

This document proposes to revise §§1.752–3 and 1.752–5 of the Income Tax Regulations (26 CFR part 1) relating to the allocation by a partnership of nonrecourse liabilities.

Background

Treasury regulation §1.752–3 currently provides a three-tiered system for allocating nonrecourse liabilities. The three-tiered system applies sequentially. Thus, as a portion of a liability is allocated to a partner under the first tier, that portion is not available to be allocated under the second tier. Similarly, as a portion of a liability is allocated to a partner under the second tier, that portion is not available to be allocated in the third tier.

Under the first tier, a partner is allocated an amount of the liability equal to that partner's share of partnership minimum gain under section 704(b). See §1.704–2(g)(1). Under the second tier, to the extent the entire liability has not been allocated under the first tier, a partner will be allocated an amount of liability equal to the gain that partner would be allocated under section 704(c) if the partnership disposed of all partnership property subject to one or more nonrecourse liabilities in full satisfaction of the liabilities (section 704(c) minimum gain). Under the third tier, a partner is allocated any excess nonrecourse liabilities under one of several methods that the partnership may choose. One allocation method is based on the partner's share of partnership profits. The partnership may specify in its partnership agreement the partners' interests in partnership profits for purposes of allocating excess nonrecourse liabilities provided the specified interests are reasonably consistent with allocations of some other significant item of partnership income or gain. The partnership also may allocate excess nonrecourse liabilities in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated. The partnership may change its allocation method under the third tier from year to year.

In Rev. Rul. 95–41, 1995–1 C.B. 132, the IRS and Treasury addressed the effect of the three section 704(c) allocation methods under §1.704–3 upon the three tiers of §1.752–3(a). Rev. Rul. 95–41 also stated that in determining the partners' interests in partnership profits, solely for purposes of the third tier, section 704(c) built-in gain (i.e., the excess of a property's book value over the contributing partner's adjusted tax basis in the property upon contribution) that was not taken into account under §1.752–3(a)(2) (the second tier) is one factor, but not the only factor, to be considered. This gain (excess section 704(c) gain) is equal to the excess of the amount of section 704(c) built-in gain attributable to an item of property over the amount of section 704(c) minimum gain on that property.

Explanation of Provisions

Modifications to Third Tier

The three tiers of §1.752–3(a) are structured to allocate liabilities to those partners who generally would be allocated income or gain upon the relief of those liabilities. Under section 752(b), any decrease in a partner's share of the liabilities of a partnership will be considered a distribution of money to the partner by the partnership. Under section 731(a), a partner will recognize gain on the distribution of money by the partnership to the extent that the distribution exceeds the partner's adjusted basis in its partnership interest. Section 704(c) generally ensures that any built-in gain on contributed property will be recognized by the contributing partner upon the disposition of the property by the partnership. The partnership liability allocation rules arguably should not accelerate the contributing partner's recognition of that gain when the amount of the partnership's liability attributable to such property is sufficient, if allocated to the contributing partner, to prevent such partner from recognizing gain.

In response to comments received, the proposed regulations modify the third tier to allow a partnership to allocate the portion of a nonrecourse liabilities in excess of the portions allocated in tiers one and two (excess nonrecourse liabilities) based on the excess section 704(c) gain attributable to the property securing the liability. Thus, to the extent a portion of a partnership nonrecourse liability is available to be allocated in the third tier, the partnership may allocate that portion to the contributing partner based on the excess section 704(c) gain inherent in the property.

Under §1.704–3(a)(2), section 704(c) generally applies on a property-by-property basis. Therefore, in determining the amount of excess section 704(c) gain, the built-in gains and losses on items of contributed property cannot be aggregated.

Section 1.704–3(a)(3)(i) provides that the book value of contributed property is equal to its fair market value at the time of contribution and is subsequently adjusted for cost recovery and other events that affect the basis of the property. Section 1.704–3(a)(3)(ii) provides that the section 704(c) built-in gain with respect to a property is the excess of the property's book value over the contributing partner's adjusted tax basis in the property upon contribution. The built-in gain is thereafter reduced by decreases in the difference between the property's book value and adjusted tax basis. Similarly, the excess section 704(c) gain will decline as the difference between the property's fair market value and tax basis declines.

If a partnership holds section 704(c) property subject to the ceiling rule of §1.704–3(b)(1), in certain situations, the first tier of §1.752–3(a) can gradually shift the allocation of liabilities away from the partner that contributed the property (the contributing partner) to a non-contributing partner who does not necessarily need, for tax purposes, the entire amount of the liability allocated to the non-contributing partner in the first tier. This can give rise to deemed distributions to the contributing partner, resulting in gain recognition under section 731(a)(1) at a time that arguably is earlier than appropriate. The IRS and Treasury considered other alternatives for amending §1.752–3 that would address these liability shifts caused by the ceiling rule, but rejected them because of their complexity. The proposed alternative was adopted because it is simple and seems to address the predominant concerns raised by practitioners regarding the contribution of section 704(c) property. The IRS and Treasury request comments on whether further modifications to the three-tiered structure of §1.752–3(a) are necessary to more appropriately allocate nonrecourse liabilities among partners and, if so, what type of modifications would be appropriate.

The holding in Rev. Rul. 95–41, 1995–1 C.B. 132, that excess section 704(c) gain is one factor to consider in determining a partner's interest in partnership profits will remain relevant where a partner does not allocate nonrecourse debt under the third tier based on the excess section 704(c) gain attributable to the property that is subject to the debt. However, once a partner has allocated nonrecourse indebtedness pursuant to the rule in these proposed regulations based upon excess section 704(c) gain, that excess section 704(c) gain cannot again be considered in determining a partner's interest in partnership profits.

Allocation of Single Liability Among Multiple Properties

Several commentators have requested that the IRS and Treasury issue guidance regarding the calculation of section 704(c) minimum gain under the second tier when a partnership holds multiple properties subject to a single nonrecourse liability. This situation typically arises when a partnership that holds several properties, each subject to an individual liability, refinances the individual liabilities with a single nonrecourse liability.

To apply the second tier, partnerships must determine the amount of the liability that encumbers each asset. This allows the partnerships to determine the section 704(c) minimum gain in each asset. See §1.704–3(a)(2).

The proposed regulations provide that if a partnership holds multiple properties subject to a single liability, the liability may be allocated among the properties based on any reasonable method. Under the proposed regulations, a method is not reasonable if it allocates to any property an amount that exceeds the fair market value of the property. Thus, for example, the liability may be allocated to the properties based on the relative fair market value of each property.

The portion of the nonrecourse liability allocated to each item of partnership property is treated as a separate loan under §1.752–3(a)(2). The proposed regulations provide that once a liability is allocated among the properties, a partnership may not change the method for allocating the liability. However, if one of the properties is no longer subject to the liability, the portion of the liability allocated to that property must be reallocated to the properties still subject to the liability so that the amount allocated to any property does not exceed the fair market value of such property at the time of the reallocation.

If the outstanding principal of a liability is reduced, the reduction will affect the amount of section 704(c) minimum gain under the second tier. The proposed regulations provide that as the outstanding principal of a liability is reduced, the reduction in principal outstanding is allocated among the properties in the same proportion that the principal originally was allocated to the properties.

These rules affect only the calculation of section 704(c) minimum gain under the second tier of §1.752–3(a).

Allocation of Single Liability Among Multiple Partnerships

Some commentators also have requested guidance on allocations of a nonrecourse liability among multiple partnerships. This situation may arise when a partner contributes multiple properties subject to the same nonrecourse liability to more than one partnership. It also may arise in a division of a partnership under section 708. Although the proposed regulations do not address this issue, the IRS and Treasury request comments regarding appropriate methods of allocating such liabilities.

Proposed Effective Date

These regulations are proposed to apply to any liability incurred or assumed by a partnership on or after the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regula-

tory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 3, 2000, at 10 a.m., in Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by April 12, 2000.

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

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

Drafting Information

The principal author of these regulations is Christopher Kelley, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.752–3 is amended as follows:

1. Paragraph (a)(3) is amended by adding two sentences immediately before the last sentence in the paragraph.

2. Paragraph (b) is redesignated as paragraph (c).

3. New paragraph (b) is added.

4. Paragraph (d) is added.

The revision and additions read as follows:

§1.752–3 Partner's share of nonrecourse liabilities.

(a) * * *

(3) * * * Additionally, the partnership may first allocate an excess nonrecourse liability to a partner up to the amount of built-in gain on section 704(c) property (as defined under §1.704–3(a)(3)(ii)) that is allocable to the partner on the property subject to that nonrecourse liability to the extent that such built-in gain exceeds the gain described in paragraph (a)(2) of this section with respect to such property. To the extent a partnership uses this additional method and the entire amount of the excess nonrecourse liability is not allocated to the contributing partner, the partnership must allocate the remaining amount of the excess nonrecourse liability under one of the other methods in this paragraph (a)(3).* * *

(b) *Allocation of a single nonrecourse liability among multiple properties*—(1) *In general*. For purposes of determining the amount of taxable gain under paragraph (a)(2) of this section, if a partnership holds multiple properties subject to a single nonrecourse liability, the partnership may allocate the liability among the multiple properties under any reasonable method. A method is not reasonable if it allocates to any item of property an amount of the liability in excess of the fair market value of the property at the time the liability is incurred. The portion of the nonrecourse liability allocated to each item of partnership property is then treated as a separate loan under paragraph (a)(2) of this section. In general, a partnership may not change the method of allocating a single nonrecourse liability under this paragraph (b) while any portion of the liability is outstanding. However, if one or more of the multiple properties subject to the liability is no longer subject to the liability, the portion of the property allocated to that property must be reallocated among the properties still subject to the liability so that the amount of the liability allocated to any property does not exceed the fair market value of such property at the time of reallocation.

(2) *Reductions in principal*. For this paragraph (b), when the outstanding principal of a partnership liability is reduced, the reduction of outstanding principal is allocated among the multiple properties in the same proportion that the partnership liability originally was allocated to the properties under paragraph (b)(1) of this section.

* * * * *

(d) *Effective date*. This section applies to partnership liabilities incurred or assumed on or after the date final regulations are published in the **Federal Register**.

Par. 3 The first sentence of paragraph (a) of §1.752–5 is revised to read as follows:

§1.752–5 Effective dates and transition rules

(a) *In general*. Except as otherwise provided in §1.752–3(d), unless a partnership makes an election under paragraph (b)(1) of this section to apply the provisions of §§1.752–1 through 1.752–4 earlier, §§1.752–1 through 1.752–4 apply to any liability incurred or assumed by a partnership on or after December 28, 1991, other than a liability incurred or assumed by the partnership pursuant to a

written binding contract in effect prior to December 28, 1991 and at all times thereafter. * * *

* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 12, 2000, 8:45 a.m., and published in the issue of the Federal Register for January 13, 2000, 65 F.R. 2081)

Notice of Proposed Rulemaking and Notice of Public Hearing

Partnership Mergers and Divisions

REG–111119–99

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations on the tax consequences of partnership mergers and divisions. The proposed regulations affect partnerships and their partners. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by April 10, 2000. Requests to speak (with outlines of oral comments) at the public hearing scheduled for May 4, 2000, must be submitted by April 13, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–111119–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–111119–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Dan Carmody, (202) 622-3080; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

This document proposes to amend sections 708, 743, and 752 of the Income Tax Regulations (26 CFR part 1) regarding partnership mergers and divisions.

Partnership Mergers

Background

Section 708(b)(2)(A) provides that in the case of a merger or consolidation of two or more partnerships, the resulting partnership is, for purposes of section 708, considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership. Section 1.708–1(b)(2)(i) of the Income Tax Regulations provides that if the resulting partnership can be considered a continuation of more than one of the merging partnerships, the resulting partnership is the continuation of the partnership that is credited with the contribution of the greatest dollar value of assets to the resulting partnership. If none of the members of the merging partnerships own more than a 50 percent interest in the capital and profits of the resulting partnership, all of the merged partnerships are considered terminated, and a new partnership results. The taxable years of the merging partnerships that are considered terminated are closed under section 706(c).

Although section 708 and the applicable regulations provide which partnership continues when two or more partnerships merge, the statute and regulations do not prescribe a form for the partnership merger. (Often, state merger statutes do not provide a particular form for a partnership merger.) In revenue rulings, however, the IRS has prescribed the form of a partnership merger for Federal income tax purposes.

In Rev. Rul. 68–289 (1968–1 C.B. 314), three existing partnerships (P1, P2, and P3) merged into one partnership with P3 continuing under section 708(b)(2)(A). The revenue ruling holds that P1 and P2, the two terminating partnerships, are treated as having contributed all of their respective assets and liabilities to P3, the resulting partnership, in exchange for a partnership interest in P3. P1 and P2 are considered terminated and the partners of P1 and P2 receive interests in P3 with a basis under section 732(b) in liquidation of P1 and P2 (Assets-Over Form). Rev. Rul. 77–458 (1977–2 C.B. 220), and Rev. Rul. 90–17 (1990–1 C.B. 119), also follow the Assets-Over Form for a partnership merger.

Explanation of Provisions

A. *Form of a Partnership Merger*

The IRS and Treasury are aware that taxpayers may accomplish a partnership merger by undertaking transactions in accordance with jurisdictional laws that follow a form other than the Assets-Over Form. For example, the terminating partnership could liquidate by distributing its assets and liabilities to its partners who then contribute the assets and liabilities to the resulting partnership (Assets-Up Form). In addition, the partners in the terminating partnership could transfer their terminating partnership interests to the resulting partnership in exchange for resulting partnership interests, and the terminating partnership could liquidate into the resulting partnership (Interest-Over Form).

In the partnership incorporation area, a taxpayer's form generally is respected if the taxpayer actually undertakes, under the relevant jurisdictional law, all the steps of a form that is set forth in one of three situations provided in Rev. Rul. 84–111 (1984–2 C.B. 88). The three situations that Rev. Rul. 84–111 sets forth are the Assets-Over Form, Assets-Up Form, and Interest-Over Form. Rev. Rul. 84–111 explains that, depending on the form chosen to incorporate the partnership, the adjusted basis and holding periods of the various assets received by the corporation and the adjusted basis and holding periods of the stock received by the former partners can vary. Like partnership incorporations, each form of a partnership merger has potentially differ-

ent tax consequences.

Under the Assets-Up Form, partners could recognize gain under sections 704(c)(1)(B) and 737 (and incur state or local transfer taxes) when the terminating partnership distributes the assets to the partners. However, under the Assets-Over Form, gain under sections 704(c)(1)(B) and 737 is not triggered. See §§1.704–4(c)(4) and 1.737–2(b). Additionally, under the Assets-Up Form, because the adjusted basis of the assets contributed to the resulting partnership is determined first by reference to section 732 (as a result of the liquidation) and then section 723 (by virtue of the contribution), in certain circumstances, the adjusted basis of the assets contributed may not be the same as the adjusted basis of the assets in the terminating partnership. These circumstances occur if the partners' aggregate adjusted basis of their interests in the terminating partnership does not equal the terminating partnership's adjusted basis in its assets. Under the Assets-Over Form, because the resulting partnership's adjusted basis in the assets it receives is determined solely under section 723, the adjusted basis of the assets in the resulting partnership is the same as the adjusted basis of the assets in the terminating partnership.

The regulations propose to respect the form of a partnership merger for Federal income tax purposes if the partnerships undertake, pursuant to the laws of the applicable jurisdiction, the steps of either the Assets-Over Form or the Assets-Up Form. (This rule applies even if none of the merged partnerships are treated as continuing for Federal income tax purposes.) Generally, when partnerships merge, the assets move from one partnership to another at the entity level, or in other words, like the Assets-Over Form. However, if as part of the merger, the partnership titles the assets in the partners' names, the proposed regulations treat the transaction under the Assets-Up Form. If partnerships use the Interest-Over Form to accomplish the result of a merger, the partnerships will be treated as following the Assets-Over Form for Federal income tax purposes.

In the context of partnership incorporations, Rev. Rul. 84–111 distinguishes among all three forms of incorporation. However, with respect to the Interest-Over Form, the revenue ruling respects only the transferors' conveyances of partnership interests, while treating the receipt of the partnership interests by the transferee corporation as the receipt of the partnership's assets (i.e., the Assets-Up Form). The theory for this result, based largely on *McCauslen v. Commissioner*, 45 T.C. 588 (1966), is that the transferee corporation can only receive assets since it is not possible, as a sole member, for it to receive and hold interests in a partnership (i.e., a partnership cannot have only one member; so, the entity is never a partnership in the hands of the transferee corporation).

Adherence to the approach followed in Rev. Rul. 84–111 creates problems in the context of partnership mergers that are not present with respect to partnership incorporations. Unlike the corporate rules, the partnership rules impose certain tax results on partners based upon a concept that matches a contributed asset to the partner that contributed the asset. Sections 704(c) and 737 are examples of such rules. The operation of these rules breaks down if the partner is treated as contributing an asset that is different from the asset that the partnership is treated as receiving.

Given that the hybrid treatment of the Interest-Over Form transactions utilized in Rev. Rul. 84–111 is difficult to apply in the context of partnership mergers, another characterization will be applied to such transactions. The Assets-Over Form generally will be preferable for both the IRS and taxpayers. For example, when partnerships merge under the Assets-Over Form, gain under sections 704(c)(1)(B) and 737 is not triggered. Moreover, the basis of the assets in the resulting partnership is the same as the basis of the assets in the terminating partnership, even if the partners' aggregate adjusted basis of their interests in the terminating partnership does not equal the terminating partnership's adjusted basis in its assets.

If partnerships merge under applicable law without implementing a form, the proposed regulations treat the partnerships as following the Assets-Over Form. This approach is consistent with the treatment of partnership to corporation elective conversions under the check-the-box regulations and technical terminations under section 708(b)(1)(B), other formless movements of a partnership's assets.

B. *Adverse Tax Consequences of the Assets-Over Form*

The IRS and Treasury are aware that certain adverse tax consequences may occur for partnerships that merge in a transaction that will be taxed in accordance with the Assets-Over Form. These proposed regulations address some of the adverse tax consequences regarding section 752 liability shifts and buyouts of exiting partners.

1. Section 752 Revisions

If a highly leveraged partnership (the terminating partnership) merges with another partnership (the resulting partnership), all of the partners in the terminating partnership could recognize gain because of section 752 liability shifts. Under the Assets-Over Form, the terminating partnership becomes a momentary partner in the resulting partnership when the terminating partnership contributes its assets and liabilities to the resulting partnership in exchange for interests in the resulting partnership. If the terminating partnership (as a momentary partner in the resulting partnership) is considered to receive a deemed distribution under section 752 (after netting increases and decreases in liabilities under §1.752–1(f)) that exceeds the terminating partnership's adjusted basis of its interests in the resulting partnership, the terminating partnership would recognize gain under section 731. The terminating partnership's gain then would be allocated to each partner in the terminating partnership under section 704(b). In this situation, a partner in the terminating partnership could recognize gain even though the partner's adjusted basis in its resulting partnership interest or its share of partnership liabilities in the resulting partnership is large enough to avoid the recognition of gain, provided that the decreases in liabilities in the terminating partnership are netted against the increases in liabilities in the resulting partnership.

The proposed regulations clarify that when two or more partnerships merge under the Assets-Over Form, increases or decreases in partnership liabilities associated with the merger are netted by the partners in the terminating partnership and the resulting partnership to determine the effect of the merger under section 752. The IRS and Treasury consider it appropriate to treat the merger as a single trans-

action for determining the net liability shifts under section 752. Therefore, a partner in the terminating partnership will recognize gain on the contribution under section 731 only if the net section 752 deemed distribution exceeds that partner's adjusted basis of its interest in the resulting partnership.

2. Buyout of a Partner

Another adverse tax consequence may occur when a partner in the terminating partnership does not want to become a partner in the resulting partnership and would like to receive money or property instead of an interest in the resulting partnership. Under the Assets-Over Form, the terminating partnership will not recognize gain or loss under section 721 when it contributes its property to the resulting partnership in exchange for interests in the resulting partnership. However, if, in order to facilitate the buyout of the exiting partner, the resulting partnership transfers money or other consideration to the terminating partnership in addition to the resulting partnership interests, the terminating partnership may be treated as selling part of its property to the resulting partnership under section 707(a)(2)(B). Any gain or loss recognized by the terminating partnership generally would be allocated to all the partners in the terminating partnership even though only the exiting partner would receive the consideration.

The IRS and Treasury believe that, under certain circumstances, when partnerships merge and one partner does not become a partner in the resulting partnership, the receipt of cash or property by that partner should be treated as a sale of that partner's interest in the terminating partnership to the resulting partnership, not a disguised sale of the terminating partnership's assets. Accordingly, the proposed regulations provide that if the merger agreement (or similar document) specifies that the resulting partnership is purchasing the exiting partner's interest in the terminating partnership and the amount paid for the interest, the transaction will be treated as a sale of the exiting partner's interest to the resulting partnership. This treatment will apply even if the resulting partnership sends the consideration to the terminating partnership on behalf of the exiting partner, so long as the designated language is used in the relevant document.

In this situation, the exiting partner is treated as selling a partnership interest in the terminating partnership to the resulting partnership (and the resulting partnership is treated as purchasing the partner's interest in the terminating partnership) immediately prior to the merger. Immediately after the sale, the resulting partnership becomes a momentary partner in the terminating partnership. Consequently, the resulting partnership and ultimately its partners (determined prior to the merger) inherit the exiting partner's capital account in the terminating partnership and any section 704(c) liability of the exiting partner. If the terminating partnership has an election in effect under section 754 (or makes an election under section 754), the resulting partnership will have a special basis adjustment regarding the terminating partnership's property under section 743. The proposed regulations provide that the resulting partnership's basis adjustments under section 743 must be ultimately allocated solely to the partners who were partners in the resulting partnership immediately before the merger; the adjustments do not affect the common basis of the resulting partnership's assets.

C. Merger as Part of a Larger Transaction

The proposed regulations provide that if the merger is part of a larger series of transactions, and the substance of the larger series of transactions is inconsistent with following the form prescribed for the merger, the form may not be respected, and the larger series of transactions may be recast in accordance with their substance. An example illustrating the application of this rule is included in the proposed regulations.

D. Measurement of Dollar Value of Assets

As discussed above, the regulations currently provide that in a merger of partnerships, if the resulting partnership can be considered a continuation of more than one of the merging partnerships, the resulting partnership is the continuation of the partnership that is credited with the contribution of the greatest dollar value of assets to the resulting partnership. Commentators have questioned whether this rule refers to the gross or net value of the assets of a partnership. The proposed regulations provide that the value of assets of a partnership is determined net of the partnership's liabilities.

E. Effective Date

The regulations are proposed to apply to mergers occurring on or after the date final regulations are published in the **Federal Register**.

Partnership Divisions

Background

Section 708(b)(2)(B) provides that, in the case of a division of a partnership into two or more partnerships, the resulting partnerships (other than any resulting partnership the members of which had an interest of 50 percent or less in the capital and profits of the prior partnership) are considered a continuation of the prior partnership. Section 1.708–1(b)(2)(ii) provides that any other resulting partnership is not considered a continuation of the prior partnership but is considered a new partnership. If the members of none of the resulting partnerships owned an interest of more than 50 percent in the capital and profits of the prior partnership, the prior partnership is terminated. Where members of a partnership that has been divided do not become members of a resulting partnership that is considered a continuation of the prior partnership, such partner's interest is considered liquidated as of the date of the division.

Section 708(b)(2)(B) and the applicable regulations do not prescribe a particular form for the division involving continuing partnerships. The IRS has not addressed in published guidance how the assets and liabilities of the prior partnership move into the resulting partnerships. Taxpayers generally have followed either the Assets-Over Form or the Assets-Up Form for partnership divisions.

Under the Assets-Over Form, the prior partnership transfers certain assets to a resulting partnership in exchange for interests in the resulting partnership. The prior partnership then immediately distributes the resulting partnership interests to partners who are designated to receive interests in the resulting partnership.

Under the Assets-Up Form, the prior

partnership distributes certain assets to some or all of its partners who then contribute the assets to a resulting partnership in exchange for interests in the resulting partnership.

Explanation of Provisions

A. Form of a Partnership Division

As with partnership mergers, the IRS and Treasury recognize that different tax consequences can arise depending on the form of the partnership division. Because of the potential different tax results that could occur depending on the form followed by the partnership, the regulations propose to respect for Federal income tax purposes the form of a partnership division accomplished under laws of the applicable jurisdiction if the partnership undertakes the steps of either the Assets-Over Form or the Assets-Up Form. Thus, the same forms allowed for partnership mergers will be allowed for partnership divisions.

Generally, an entity cannot be classified as a partnership if it has only one member. This universally has been held to be the case in classifying transactions where interests in a partnership are transferred to a single person, so that the partnership goes out of existence. *McCauslen v. Commissioner*, 45 T.C. 588 (1966); Rev. Rul. 99–6, 1999–6 I.R.B. 6; Rev. Rul. 67–65, 1967–1 C.B. 168; Rev. Rul. 55–68, 1955–1 C.B. 372. However, in at least one instance involving the contribution of assets by an existing partnership to a newly-formed partnership, regulations have provided that the momentary existence of the new partnership will be respected for Federal income tax purposes. See §1.708–1(b)(1)(iv). Pursuant to the proposed regulations, under the Assets-Over Form of a partnership division, the prior partnership's momentary ownership of all the interests in a resulting partnership will not prevent the resulting partnership from being classified as a partnership on formation.

The example in current §1.708–1(b)(2)(ii) indicates that when a partnership is not considered a continuation of the prior partnership under section 708(b)(2)(B) (partnership considered a new partnership under current §1.708–1(b)(2)(ii)), the new partnership is created under the Assets-Up Form. The regulations propose to modify this result and provide examples illustrating that partnerships can divide and create a new partnership under either the Assets-Over Form or the Assets-Up Form.

Consistent with partnership mergers, if a partnership divides using a form other than the two prescribed, it will be treated as undertaking the Assets-Over Form.

These proposed regulations use four terms to describe the form of a partnership division. Two of these terms, prior partnership and resulting partnership, describe partnerships that exist under the applicable jurisdictional law. The prior partnership is the partnership that exists under the applicable jurisdictional law before the division, and the resulting partnerships are the partnerships that exist under the applicable jurisdictional law after the division. The other two terms, divided partnership and recipient partnership, are Federal tax concepts. A divided partnership is a partnership that is treated, for Federal income tax purposes, as transferring assets in connection with a division, and a recipient partnership is a partnership that is treated, for Federal income tax purposes, as receiving assets in connection with a division. The divided partnership must be a continuation of the prior partnership. Although the divided partnership is considered one continuing partnership for Federal income tax purposes, it may actually be two different partnerships under the applicable jurisdictional law (i.e., the prior partnership and a different resulting partnership that is considered a continuation of the prior partnership for Federal income tax purposes).

Finally, because in a formless division it generally will be unclear which partnership should be treated, for Federal income tax purposes, as transferring assets (i.e, the divided partnership) to another partnership (i.e., the recipient partnership) where more than one partnership is a continuation of the prior partnership, the proposed regulations provide that the continuing resulting partnership with the assets having the greatest fair market value (net of liabilities) will be treated as the divided partnership. This issue also is present where the partnership that, in form, transfers assets is not a continuation of the prior partnership, but more than one of the other resulting partnerships are continuations of the prior partnership. The same rule applies to these situations.

B. Consequences under Sections 704(c)(1)(B) and 737

Gain under sections 704(c)(1)(B) and 737 may be triggered when section 704(c) property or substituted section 704(c) property is distributed to certain partners. These rules often will be implicated in the context of partnership divisions.

Where a division is accomplished in a transaction that is taxed in accordance with the Assets-Over Form, the partnership interest in the recipient partnership will be treated as a section 704(c) asset to the extent that the interest is received by the divided partnership in exchange for section 704(c) property. Section 1.704–4(d)(1). Accordingly, the distribution of the partnership interests in the recipient partnership by the divided partnership generally will trigger section 704(c)(1)(B) where the interests in the recipient partnership are received by a partner of the divided partnership other than the partner who contributed the section 704(c) property to the divided partnership. In addition, section 737 may be triggered if a partner who contributed section 704(c) property to the divided partnership receives an interest in the recipient partnership that is not attributable to the section 704(c) property.

Where a division is accomplished under the Assets-Up Form, assets are distributed directly to the partners who will hold interests in the recipient partnership. The distribution could trigger section 704(c)(1)(B) or 737 depending on the identity of the distributed asset and the distributee partner.

The regulations under section 737 provide an exception for certain partnership divisions. Section 737 does not apply when a transferor partnership transfers all the section 704(c) property contributed by a partner to a second partnership in a section 721 exchange, followed by a distribution of an interest in the transferee partnership in complete liquidation of the interest of the partner that originally contributed the section 704(c) property to the transferor partnership. Section 1.737–2(b)(2). This rule, however, may not apply to many partnership divisions because the original contributing partner often remains a partner in the divided partnership. No similar rule is provided

under section 704(c)(1)(B).

In many instances, the application of sections 704(c)(1)(B) and 737 will be appropriate when a partnership divides under either the Assets-Over Form or the Assets-Up Form. Consider the following example: A, B, C, and D form a partnership. A contributes appreciated property X ($0 basis and $200 value), B contributes property Y ($200 basis and $200 value), and C and D each contribute $200 cash. The partnership subsequently divides into two partnerships using the Assets-Over Form, distributing interests in the recipient partnership in accordance with each partner's pro rata interest in the prior partnership. Property X remains in the prior partnership, and property Y is contributed to the recipient partnership. Under these facts, section 737 could be avoided if an exception were created for the distribution of the recipient partnership interests. If, subsequent to the division, half of property Y is distributed to A, section 737 would not be triggered because property X (the section 704(c) property) is no longer in the same partnership as property Y.

While the IRS and Treasury generally believe that it is appropriate to apply sections 704(c)(1)(B) and 737 in the context of partnership divisions, comments are invited on whether it would be appropriate to expand the exceptions to these sections in certain circumstances relating to divisive transactions.

C. Division as Part of a Larger Transaction

The proposed regulations provide the same rule for partnership divisions that applies to partnership mergers.

D. Effective Date

The regulations are proposed to apply to divisions occurring on or after the date final regulations are published in the **Federal Register**.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Department of Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 4, 2000, beginning at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must submit timely written comments and must submit an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by April 13, 2000.

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

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

Drafting Information

The principal author of these regulations is Mary Beth Collins, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.708–1 is amended as follows:

1. Paragraph (b) is amended by removing paragraph (b)(2) and by redesignating each paragraph listed in the first column of the following table as the paragraph listed in the second column as indicated in the following table:

Old Paragraph	*Redesignated Paragraph*
(b)(1)(i)	(b)(1)
(b)(1)(i)(*a*)	(b)(1)(i)
(b)(1)(i)(*b*)	(b)(1)(ii)
(b)(1)(ii)	(b)(2)
(b)(1)(iii)	(b)(3)
(b)(1)(iii)(*a*)	(b)(3)(i)
(b)(1)(iii)(*b*)	(b)(3)(ii)
(b)(1)(iv)	(b)(4)
(b)(1)(v)	(b)(5)

1. Paragraphs (c) and (d) are added to read as follows:

§1.708–1 Continuation of partnership.

* * * * *

(c) *Merger or consolidation*—(1) *General rule*. If two or more partnerships merge or consolidate into one partnership, the resulting partnership shall be considered a continuation of the merging or consolidating partnership the members of which own an interest of more than 50 percent in the capital and profits of the re-

sulting partnership. If the resulting partnership can, under the preceding sentence, be considered a continuation of more than one of the merging or consolidating partnerships, it shall, unless the Commissioner permits otherwise, be considered the continuation of that partnership which is credited with the contribution of assets having the greatest fair market value (net of liabilities) to the resulting partnership. Any other merging or consolidating partnerships shall be considered as terminated. If the members of none of the merging or consolidating partnerships have an interest of more than 50 percent in the capital and profits of the resulting partnership, all of the merged or consolidated partnerships are terminated, and a new partnership results. The taxable years of such merging or consolidating partnerships which are considered terminated shall be closed in accordance with the provisions of section 706(c), and such partnerships shall file their returns for a taxable year ending upon the date of termination, i.e., the date of merger or consolidation. The resulting partnership shall file a return for the taxable year of the merging or consolidating partnership that is considered as continuing. The return shall state that the resulting partnership is a continuation of such merging or consolidating partnership and shall include the names and addresses of the merged or consolidated partnerships. The respective distributive shares of the partners for the periods prior to and subsequent to the date of merger or consolidation shall be shown as a part of the return.

(2) *Form of a merger or consolidation*—(i) *Assets-over form*. When two or more partnerships merge or consolidate into one partnership under the applicable jurisdictional law without undertaking a form for the merger or consolidation, or undertake a form for the merger or consolidation that is not described in paragraph (c)(2)(ii) of this section, any merged or consolidated partnership that is considered terminated under paragraph (c)(1) of this section is treated as undertaking the assets-over form for Federal income tax purposes. Under the assets-over form, the merged or consolidated partnership that is considered terminated under paragraph (c)(1) of this section contributes all of its assets and liabilities to the resulting partnership in exchange for an interest in the resulting partnership; and, immediately thereafter, the terminated partnership distributes interests in the resulting partnership to its partners in liquidation of the terminated partnership.

(ii) *Assets-up form*. Despite the partners' transitory ownership of the terminated partnership's assets and liabilities, the form of a partnership merger or consolidation will be respected for Federal income tax purposes if the merged or consolidated partnership that is considered terminated under paragraph (c)(1) of this section distributes its assets and liabilities to its partners in liquidation of the partners' interests in the terminated partnership; and, immediately thereafter, the partners in the terminated partnership contribute the distributed assets and liabilities to the resulting partnership in exchange for interests in the resulting partnership.

(3) *Sale of an interest in the merging or consolidating partnership*. In a transaction characterized under the assets-over form, a sale of an interest in the terminated partnership to the resulting partnership that occurs as part of a merger or consolidation under section 708(b)(2)(A), as described in paragraph (c)(2)(i) of this section, will be respected as a sale of a partnership interest if the merger agreement (or similar document) specifies that the resulting partnership is purchasing interests from a particular partner in the merging or consolidating partnership and the consideration that is transferred for each interest sold. See section 741 and §1.741–1 for determining the selling partner's gain or loss on the sale or exchange of the partnership interest.

(4) *Examples*. The following examples illustrate the rules in paragraphs (c)(1) through (3) of this section:

Example 1. Partnership AB, in whose capital and profits A and B each own a 50-percent interest, and partnership CD, in whose capital and profits C and D each own a 50-percent interest, merge on September 30, 1999, and form partnership ABCD. Partners A, B, C, and D are on a calendar year, and partnership AB and partnership CD are also on a calendar year. After the merger, the partners have capital and profits interests as follows: A, 30 percent; B, 30 percent; C, 20 percent; and D, 20 percent. Since A and B together own an interest of more than 50 percent in the capital and profits of partnership ABCD, such partnership shall be considered a continuation of partnership AB and shall continue to file returns on a calendar year basis. Since C and D own an interest of less than 50 percent in the capital and profits of partnership ABCD, the taxable year of partnership CD closes as of September 30, 1999, the date of the merger, and partnership CD is terminated as of that date. Partnership ABCD is required to file a return for the taxable year January 1 to December 31, 1999, indicating thereon that, until September 30, 1999, it was partnership AB. Partnership CD is required to file a return for its final taxable year, January 1 through September 30, 1999.

Example 2. (i) Partnership X, in whose capital and profits A owns a 40-percent interest and B owns a 60-percent interest, and partnership Y, in whose capital and profits B owns a 60-percent interest and C owns a 40-percent interest, merge on September 30, 1999. The dollar-value of the partnership X assets (net of liabilities) is $100X, and the dollar-value of the partnership Y assets (net of liabilities) is $200X. The merger is accomplished under state law by partnership Y contributing its assets and liabilities to partnership X in exchange for interests in partnership X, with partnership Y then liquidating, distributing interests in partnership X to B and C.

(ii) B, a partner in both partnerships prior to the merger, owns a greater than 50-percent interest in the resulting partnership following the merger. Accordingly, because the dollar-value of partnership Y's assets (net of liabilities) was greater than that of partnership X's, under paragraph (c)(1) of this section, X will be considered to terminate in the merger. As a result, even though, for state law purposes, the transaction was undertaken with partnership Y contributing its assets and liabilities to partnership X and distributing interests in partnership X to its partners, pursuant to paragraph (c)(2)(i) of this section, for Federal income tax purposes, the transaction will be treated as if partnership X contributed its assets to partnership Y in exchange for interests in partnership Y and then liquidated, distributing interests in partnership Y to A and B.

Example 3. (i) Partnership X and partnership Y merge when the partners of partnership X transfer their partnership X interests to partnership Y in exchange for partnership Y interests. Immediately thereafter, partnership X liquidates into partnership Y. The resulting partnership is considered a continuation of partnership Y, and partnership X is considered terminated.

(ii) The partnerships are treated as undertaking the assets-over form described in paragraph (c)(2)(i) of this section because the partnerships undertook a form that is not the assets-up form described in paragraph (c)(2)(ii) of this section. Accordingly, for Federal income tax purposes, partnership X is deemed to contribute its assets and liabilities to partnership Y in exchange for interests in partnership Y; and, immediately thereafter, partnership X is deemed to have distributed the interests in partnership Y to its partners in liquidation of their interests in partnership X.

Example 4. (i) A, B, and C are partners in partnership X. D, E, and F are partners in Partnership Y. Partnership X and partnership Y merge within the meaning of section 708(b)(2)(A), and the resulting partnership is considered a continuation of partnership Y. Partnership X is considered terminated. Under state law, partnerships X and Y undertake the assets-over form of paragraph (c)(2)(i) of this section to accomplish the partnership merger. C does not want to become a partner in partnership Y, and partnership X does not have the resources to buy C's

interest before the merger. C, partnership X, and partnership Y enter into an agreement that specifies that partnership Y will purchase C's interest in partnership X for $150 immediately before the merger. As part of the merger, partnership X receives from partnership Y $150 that will be distributed to C immediately before the merger, and interests in partnership Y in exchange for partnership X's assets and liabilities. Partnership X has made an election under section 754.

(ii) Because the merger agreement satisfies the requirements of paragraph (c)(3) of this section, C will be treated as selling its interest in partnership X to partnership Y for $150 immediately before the merger. See section 741 and §1.741–1 to determine the amount and character of C's gain or loss on the sale or exchange of its interest in partnership X.

(iii) Because the merger agreement satisfies the requirements of paragraph (c)(3) of this section, partnership Y is considered to have purchased C's interest in partnership X for $150 immediately before the merger. See §1.704–1(b)(2)(iv)(l) for determining partnership Y's capital account in partnership X. Partnership Y's adjusted basis of its interest in partnership X is determined under section 742 and §1.742–1. To the extent any built-in gain or loss on section 704(c) property in partnership X would have been allocated to C (including any allocations with respect to property revaluations under section 704(b) (reverse section 704(c) allocations)), see section 704 and §1.704–3(a)(7) for determining the built-in gain or loss or reverse section 704(c) allocations apportionable to partnership Y. Similarly, after the merger is completed, the built-in gain or loss and reverse section 704(c) allocations attributable to C's interest are apportioned to D, E, and F under section 704(c) and §1.704–3(a)(7).

(iv) Because partnership X has an election under section 754 in effect, partnership Y, as a momentary partner in partnership X, will have a special basis adjustment regarding the basis of partnership X's property under section 743 and §1.743–1. See section 743 and §1.743–1 for determining the amount of the adjustment. After the merger, the adjustment is allocated solely to D, E, and F—the partners in partnership Y immediately before the merger.

(v) Under paragraph (c)(2)(i) of this section, partnership X contributes assets and liabilities attributable to the interests of A and B to partnership Y in exchange for interests in partnership Y; and, immediately thereafter, partnership X distributes the interests in partnership Y to A and B in liquidation of their interests in partnership X. At the same time, partnership X distributes assets to partnership Y in liquidation of partnership Y's interest in partnership X.

(5) *Prescribed form not followed in certain circumstances.* (i) If any transactions described in paragraph (c)(2) or (3) of this section are part of a larger series of transactions, and the substance of the larger series of transactions is inconsistent with following the form prescribed in such paragraph, the Commissioner may disregard such form, and may recast the larger series of transactions in accordance with their substance.

(ii) *Example*. The following example illustrates the rules in paragraph (c)(5) of this section:

Example. A, B, and C are equal partners in partnership ABC. ABC holds no section 704(c) property. D and E are equal partners in partnership DE. B and C want to exchange their interest in ABC for all of the interests in DE. However, rather than exchanging partnership interests, DE merges with ABC by undertaking the assets-up form described in paragraph (c)(2)(ii) of this section, with D and E receiving title to the DE assets and then contributing the assets to ABC in exchange for interests in ABC. As part of a prearranged transaction, the assets acquired from DE are contributed to a new partnership, and the interests in the new partnership are distributed to B and C in complete liquidation of their interests in ABC. The merger and division in this example represent a series of transactions that in substance are an exchange of interests in ABC for interests in DE. Even though paragraph (c)(2)(ii) of this section provides that the form of a merger will be respected for Federal income tax purposes if the steps prescribed under the asset-up form are followed, and paragraph (d)(2)(i) of this section provides a form that will be followed for Federal income tax purposes in the case of partnership divisions, these forms will not be respected for Federal income tax purposes under these facts, and the transactions will be recast in accordance with their substance as a taxable exchange of interests in ABC for interests in DE.

(6) *Effective date*. This paragraph (c) is applicable to partnership mergers occurring on or after the date final regulations are published in the **Federal Register**.

(d) *Division of a partnership*—(1) *General rule.* Upon the division of a partnership into two or more partnerships, any resulting partnership (as defined in paragraph (d)(3)(iv) of this section) or resulting partnerships shall be considered a continuation of the prior partnership (as defined in paragraph (d)(3)(ii) of this section) if the members of the resulting partnership or partnerships had an interest of more than 50 percent in the capital and profits of the prior partnership. Any other resulting partnership will not be considered a continuation of the prior partnership but will be considered a new partnership. If the members of none of the resulting partnerships owned an interest of more than 50 percent in the capital and profits of the prior partnership, none of the resulting partnerships will be considered a continuation of the prior partnership and the prior partnership will be considered to have terminated. Where members of a partnership which has been divided into two or more partnerships do not become members of a resulting partnership which is considered a continuation of the prior partnership, such partner's interests shall be considered liquidated as of the date of the division. The resulting partnership that is regarded as continuing shall file a return for the taxable year of the partnership that has been divided. The return shall state that the partnership is a continuation of the prior partnership and shall set forth separately the respective distributive shares of the partners for the periods prior to and subsequent to the date of division.

(2) *Form of a division*—(i) *Assets-over form*. When a partnership divides into two or more partnerships under applicable jurisdictional law without undertaking a form for the division, or undertakes a form that is not described in paragraph (d)(2)(ii) of this section, the transaction will be characterized under the assets-over form for Federal income tax purposes.

(A) *Assets-over form where at least one resulting partnership is a continuation of the prior partnership*. In a division under the assets-over form where at least one resulting partnership is a continuation of the prior partnership, the divided partnership (as defined in paragraph (d)(3)(i) of this section) contributes certain assets and liabilities to a recipient partnership (as defined in paragraph (d)(3)(iv) of this section) or recipient partnerships in exchange for interests in such recipient partnership or partnerships; and, immediately thereafter, distributes the interests in such recipient partnership or partnerships to some or all of its partners in partial or complete liquidation of the partners' interests in the divided partnership.

(B) *Assets-over form where none of the resulting partnerships is a continuation of the prior partnership*. In a division under the assets-over form where none of the resulting partnerships is a continuation of the prior partnership, the prior partnership will be treated as contributing all of its assets and liabilities to new resulting partnerships in exchange for interests in the resulting partnerships; and, immediately thereafter, the prior partnership will be treated as liquidating by distributing the interests in the new resulting partnerships to the prior partnership's partners.

(ii) *Assets-up form*—(A) *Assets-up form where the partnership distributing assets is a continuation of the prior partnership*. Despite the partners' transitory ownership of some of the prior partnership's assets and liabilities, the form of a partnership division will be respected for

Federal income tax purposes if the divided partnership, which by definition is a continuing partnership, distributes certain assets and liabilities to some or all of its partners in partial or complete liquidation of the partners' interests in the divided partnership; and, immediately thereafter, such partners contribute the distributed assets and liabilities to a recipient partnership or partnerships in exchange for interests in such recipient partnership or partnerships.

(B) *Assets-up form where none of the resulting partnerships are a continuation of the prior partnership*. If none of the resulting partnerships are a continuation of the prior partnership, then despite the partners' transitory ownership of some or all of the prior partnership's assets and liabilities, the form of a partnership division will be respected for Federal income tax purposes if the prior partnership distributes certain assets and liabilities to some or all of its partners in partial or complete liquidation of the partners' interests in the prior partnership; and, immediately thereafter, such partners contribute the distributed assets and liabilities to a resulting partnership or partnerships in exchange for interests in such resulting partnership or partnerships. If the prior partnership does not liquidate under the applicable jurisdictional law, then with respect to the assets and liabilities that, in form, are not transferred to a new resulting partnership, the prior partnership will be treated as transferring these assets and liabilities to a new resulting partnership under the assets over form described in paragraph (d)(2)(i)(B) of this section.

(3) *Definitions*—(i) *Divided partnership*—For purposes of paragraph (d) of this section, the divided partnership is the partnership which is treated, for Federal income tax purposes, as transferring the assets and liabilities to the recipient partnership or partnerships, either directly (under the assets-over form) or indirectly (under the assets-up form). If the resulting partnership that, in form, transferred the assets and liabilities in connection with the division is a continuation of the prior partnership, then such resulting partnership will be treated as the divided partnership. If a partnership divides into two or more partnerships and only one of the resulting partnerships is a continuation of the prior partnership, then the resulting partnership that is a continuation of the prior partnership will be treated as the divided partnership. If a partnership divides into two or more partnerships without undertaking a form for the division that is recognized under paragraph (d)(2) of this section, or if the resulting partnership that had, in form, transferred assets and liabilities is not considered a continuation of the prior partnership, and more than one resulting partnership is considered a continuation of the prior partnership, the continuing resulting partnership with the assets having the greatest fair market value (net of liabilities) will be treated as the divided partnership.

(ii) *Prior partnership*—For purposes of paragraph (d) of this section, the prior partnership is the partnership subject to division that exists under applicable jurisdictional law before the division.

(iii) *Recipient partnership*—For purposes of paragraph (d) of this section, a recipient partnership is a partnership that is treated as receiving, for Federal income tax purposes, assets and liabilities from a divided partnership, either directly (under the assets-over form) or indirectly (under the assets-up form).

(iv) *Resulting partnership*—For purposes of paragraph (d) of this section, a resulting partnership is a partnership resulting from the division that exists under applicable jurisdictional law after the division. For example, where a prior partnership divides into two partnerships, both partnerships existing after the division are resulting partnerships.

(4) *Examples*. The following examples illustrate the rules in paragraphs (d)(1), (2), and (3) of this section:

Example 1. Partnership ABCD is in the real estate and insurance business. A owns a 40-percent interest, and B, C, and D each owns a 20-percent interest, in the capital and profits of the partnership. The partnership and the partners report their income on a calendar year. They agree to separate the real estate and insurance business as of November 1, 1999, and to form two partnerships; partnership AB to take over the real estate business, and partnership CD to take over the insurance business. Because members of resulting partnership AB owned more than a 50-percent interest in the capital and profits of partnership ABCD (A, 40 percent, and B, 20 percent), partnership AB shall be considered a continuation of partnership ABCD. Partnership AB is required to file a return for the taxable year January 1 to December 31, 1999, indicating thereon that until November 1, 1999, it was partnership ABCD. Partnership CD is considered a new partnership formed on November 1, 1999, and is required to file a return for the taxable year it adopts pursuant to section 706(b) and the applicable regulations.

Example 2. (i) Partnership ABCD owns properties W, X, Y, and Z, and divides into partnership AB and partnership CD. Under paragraph (d)(1) of this section, partnership AB is considered a continuation of partnership ABCD and partnership CD is considered a new partnership. Partnership ABCD distributes property Y to C and titles property Y in C's name. Partnership ABCD distributes property Z to D and titles property Z in D's name. C and D then contribute properties Y and Z, respectively, to partnership CD in exchange for interests in partnership CD. Properties W and X remain in partnership AB.

(ii) Under paragraph (d)(2)(ii) of this section, partnership ABCD will be treated as following the assets-up form for Federal income tax purposes.

Example 3. (i) Partnership ABCD owns three parcels of property: property X, with a value of $500; property Y, with a value of $300; and property Z, with a value of $200. A and B each own a 40-percent interest in the capital and profits of partnership ABCD, and C and D each own a 10 percent interest in the capital and profits of partnership ABCD. On November 1, 1999, partnership ABCD divides into three partnerships (AB1, AB2, and CD) by contributing property X to a newly formed partnership (AB1) and distributing all interests in such partnership to A and B as equal partners, and by contributing property Z to a newly formed partnership (CD) and distributing all interests in such partnership to C and D as equal partners in exchange for all of their interests in partnership ABCD.

(ii) Partnerships AB1 and AB2 both are considered a continuation of partnership ABCD, while partnership CD is considered a new partnership formed on November 1, 1999. Under paragraph (d)(2)(i)(A) of this section, partnership ABCD will be treated as following the assets-over form, with partnership ABCD contributing property X to partnership AB1 and property Z to partnership CD, and distributing the interests in such partnerships to the designated partners.

Example 4. (i) The facts are the same as in example 3, except that partnership ABCD divides into three partnerships by operation of state law, without undertaking a form.

(ii) Under the last sentence of paragraph (d)(3)(i) of this section, partnership AB1 will be treated as the resulting partnership that is the divided partnership. Under paragraph (d)(2)(i)(A) of this section, partnership ABCD will be treated as following the assets-over form, with partnership ABCD contributing property Y to partnership AB2 and property Z to partnership CD, and distributing the interests in such partnerships to the designated partners.

Example 5. (i) The facts are the same as in example 3, except that partnership ABCD divides into three partnerships by contributing property X to newly-formed partnership AB1 and property Y to newly-formed partnership AB2 and distributing all interests in each partnership to A and B in exchange for all of their interests in partnership ABCD.

(ii) Because resulting partnership CD is not a continuation of the prior partnership (partnership ABCD), partnership CD cannot be treated, for Federal income tax purposes, as the partnership that transferred assets (i.e., the divided partnership), but instead must be treated as a recipient partnership. Under the last sentence of paragraph (d)(3)(i) of this section, partnership AB1 will be treated as the re-

sulting partnership that is the divided partnership. Under paragraph (d)(2)(i)(A) of this section, partnership ABCD will be treated as following the assets-over form, with partnership ABCD contributing property Y to partnership AB2 and property Z to partnership CD, and distributing the interests in such partnerships to the designated partners.

Example 6. (i) Partnership ABCDE owns Blackacre, Whiteacre, and Redacre, and divides into partnership AB, partnership CD, and partnership DE. Under paragraph (d)(1) of this section, partnership ABCDE is considered terminated (and, hence, none of the resulting partnerships are a continuation of the prior partnership) because none of the members of the new partnerships (partnership AB, partnership CD, and partnership DE) owned an interest of more than 50 percent in the capital and profits of partnership ABCDE.

(ii) Partnership ABCDE distributes Blackacre to A and B and titles Blackacre in the names of A and B. A and B then contribute Blackacre to partnership AB in exchange for interests in partnership AB. Partnership ABCDE will be treated as following the assets-up form described in paragraph (d)(2)(ii)(B) of this section for Federal income tax purposes.

(iii) Partnership ABCDE distributes Whiteacre to C and D and titles Whiteacre in the names of C and D. C and D then contribute Whiteacre to partnership CD in exchange for interests in partnership CD. Partnership ABCDE will be treated as following the assets-up form described in paragraph (d)(2)(ii)(B) of this section for Federal income tax purposes.

(iv) Partnership ABCDE does not liquidate under state law so that, in form, the assets in new partnership DE are not considered to have been transferred under state law. Partnership ABCDE will be treated as undertaking the assets-over form described in paragraph (d)(2)(i)(B) of this section for Federal income tax purposes with respect to the assets of partnership DE. Thus, partnership ABCDE will be treated as contributing Redacre to partnership DE in exchange for interests in partnership DE; and, immediately thereafter, partnership ABCDE will be treated as distributing interests in partnership DE to D and E in liquidation of their interests in partnership ABCDE. Partnership ABCDE then terminates.

(5) *Prescribed form not followed in certain circumstances*. If any transactions described in paragraph (d)(2) of this section are part of a larger series of transactions, and the substance of the larger series of transactions is inconsistent with following the form prescribed in such paragraph, the Commissioner may disregard such form, and may recast the larger series of transactions in accordance with their substance.

(6) *Effective date*. This paragraph (d) is applicable to partnership divisions occurring on or after the date final regulations are published in the **Federal Register.**

Par. 3. Section 1.743–1 is amended by adding two sentences to the end of paragraph (h)(1).

§1.743–1 Optional adjustment to basis of partnership property.

* * * * *

(h) * * *

(1) * * * When a resulting partnership that is considered a continuation of a merged or consolidated partnership under section 708(b)(2)(A) has a basis adjustment in property held by the merged or consolidated partnership that is considered terminated under §1.708–1(c)(1) (as a result of the resulting partnership acquiring an interest in such merged or consolidated partnership, see §1.708–1(c)(3)), the resulting partnership will continue to have the same basis adjustments with respect to property distributed (see §1.708–1(c)(4), Example 4(v)) by the terminated partnership to the resulting partnership, regardless of whether the resulting partnership makes a section 754 election. The portion of the resulting partnership's adjusted basis in its assets attributable to the basis adjustment with respect to the property distributed by the terminating partnership must be segregated and allocated solely to the partners who were partners in the resulting partnership immediately before the merger or consolidation.

* * * * *

Par. 4. Section 1.752–1 is amended as follows:

1. A sentence is added to the end of paragraph (f).

2. The current *Example* in paragraph (g) is redesignated as *Example 1*.

3. *Example 2* is added in paragraph (g).

§1.752–1 Treatment of partnership liabilities.

* * * * *

(f) * * * When two or more partnerships merge or consolidate under section 708(b)(2)(A), as described in §1.708–1(c)(2)(i), increases and decreases in partnership liabilities associated with the merger or consolidation are netted by the partners in the terminating partnership and the resulting partnership to determine the effect of the merger under section 752.

(g) * * *

Example 1. * * *

Example 2. Merger or consolidation of partnerships holding property encumbered by liabilities. (i) B owns a 70 percent interest in partnership T. Partnership T's sole asset is property X, which is encumbered by a $900 liability. Partnership T's adjusted basis in property X is $600, and the value of property X is $1,000. B's adjusted basis in its partnership T interest is $420. B also owns a 20 percent interest in partnership S. Partnership S's sole asset is property Y, which is encumbered by a $100 liability. Partnership S's adjusted basis in property Y is $200, the value of property Y is $1,000, and B's adjusted basis in its partnership S interest is $40.

(ii) Partnership T and partnership S merge under section 708(b)(2)(A). Under section 708(b)(2)(A) and §1.708–1(c)(1), partnership T is considered terminated and the resulting partnership is considered a continuation of partnership S. Partnerships T and S undertake the form described in §1.708–1(c)(2)(i) for the partnership merger. Under §1.708–1(c)(2)(i), partnership T contributes property X and its $900 liability to partnership S in exchange for an interest in partnership S. Immediately thereafter, partnership T distributes the interests in partnership S to its partners in liquidation of their interests in partnership T. B owns a 25 percent interest in partnership S after partnership T distributes the interests in partnership S to B.

(iii) Under paragraph (f) of this section, B nets the increases and decreases in its share of partnership liabilities associated with the merger of partnership T and partnership S. Before the merger, B's share of partnership liabilities was $650 (B had a $630 share of partnership liabilities in partnership T and a $20 share of partnership liabilities in partnership S immediately before the merger). B's share of S's partnership liabilities after the merger is $250 (25 percent of S's total partnership liabilities of $1,000). Accordingly, B has a $400 net decrease in its share of S's partnership liabilities. Thus, B is treated as receiving a $400 distribution from partnership S under section 752(b). Because B's adjusted basis in its partnership S interest before the deemed distribution under section 752(b) is $460 ($420 + $40), B will not recognize gain under section 731. After the merger, B's adjusted basis in its partnership S interest is $60.

* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 10, 2000, 8:45 a.m., and published in the issue of the Federal Register for January 11, 2000, 65 F.R. 1572)

Notice of Proposed Rulemaking and Notice of Public Hearing

Definition of Hyperinflationary Currency for Purposes of Section 988

REG–116567–99

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice of proposed rulemaking and notice of public hearing

SUMMARY: This document contains

proposed regulations concerning when a currency will be considered hyperinflationary for purposes of section 988. These regulations are intended to prevent distortions associated with the computation of income and expense arising from section 988 transactions denominated in hyperinflationary currencies. This document also provides notice of a public hearing on these regulations.

DATES: Written and electronic comments must be received by April 20, 2000. Requests to speak (with outlines of oral comments) at the public hearing scheduled for May 17, 2000 at 10 a.m. must be submitted by April 20, 2000.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–116567–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC. 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–116567–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS site at http://www.irs.ustreas.gov/tax-regs/regslist.html. The public hearing is in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Roger M. Brown at (202) 622-3830; concerning submissions of comments, the hearing, and/or requests to be placed on the building access list to attend the hearing, contact Guy R. Traynor at (202)-622-7180 (not toll-free numbers) .

SUPPLEMENTARY INFORMATION:

Background

This document contains a proposed amendment to the Income Tax Regulations (26 CFR part 1) under section 988 of the Internal Revenue Code (Code). On March 17, 1992, the IRS and Treasury published final regulations in the **Federal Register** at 57 FR 9172 relating to the taxation of section 988 transactions, including, *inter alia*, transactions denominated in hyperinflationary currencies. Also on March 17, 1992, proposed regulations were published in the **Federal Register** at (57 FR 9217 [INTL–15–91, 1992–1 C.B. 1202]) relating to the treatment of certain financial instruments denominated in hyperinflationary currencies. The proposed regulations did not separately define hyperinflationary currency. Rather, they simply made reference to the definition in the final regulations, §1.988–1(f).

Further, T.D. 8860 on page 437 finalized the proposed regulations issued in 1992. This notice of proposed rulemaking is intended to accompany the publication of these final regulations and propose a change in the period of years that are considered in determining whether a currency is hyperinflationary for purposes of section 988.

Explanation of Provisions

For purposes of section 988, the term *hyperinflationary currency* is defined in §1.988– 1(f), which utilizes the definition in §1.985–1(b)(2)(ii)(D). This definition was developed in the context of the Dollar Approximate Separate Transactions Method (DASTM) regulations, §1.985–3, and generally considers the cumulative effects of inflation over the base period in determining whether a currency is hyperinflationary. The base period consists of the thirty-six calendar month period immediately preceding the first day of the current calendar year. Use of this base period is generally appropriate in the context of DASTM because a qualified business unit needs to know in advance if it is subject to §1.985–3 calculations. In part, this is because of the translation period requirements of §1.985–3(c)(7).

However, failure to take the current year's inflation into account for purposes of computing foreign currency gain or loss under section 988 may lead to distortions in income and expense arising from certain items whose cash flows reflect hyperinflationary conditions because inflation may rise dramatically in single year. Accordingly, the IRS and Treasury believe that for purposes of section 988, it is more appropriate to consider the cumulative inflation rate over the thirty-six month period ending on the last day of the taxpayer's (or the qualified business unit's) current taxable year. See also §1.905–3T(d)(4)(i) (including current year inflation in determining whether a currency is hyperinflationary for purposes of section 905). The change in the base period in this notice of proposed rulemaking, however, applies only for the purposes of section 988 and not for the purpose of determining whether a taxpayer (or QBU) is subject to the provisions of §1.985–3. However, other Code provisions may be affected by this change, due to the relationship of their substantive rule to section 988. See, e.g., §1.267(f)–1(e) (relating to the application of the loss disallowance rule of section 267(a)(1) as applied to related party, nonfunctional currency loans).

Proposed Effective Date

These regulations are proposed to apply to transactions entered into after February 14, 2000**.** Until these proposed regulations are finalized, the existing final regulations under §1.988–1(f) shall remain in effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies, if written) that are submitted timely to the IRS. In particular, the IRS and Treasury are interested in comments relating to the change in the

measurement of the base period, and suggesting other standards that may be applied in determining whether a currency should be considered hyperinflationary for purposes of section 988. Examples of the latter category of comments would be suggestions of alternative time periods (base periods) and hyperinflationary thresholds (e.g., different from the current 100% cumulative inflation rate) which may be used in determining whether a currency is hyperinflationary. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 17, 2000, beginning at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance, located 1111 Constitution Avenue. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the FOR FURTHER INFORMATION CONTACT section of this preamble.

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

Persons who wish to present oral comments at the hearing must submit written comments by April 20, 2000, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 20, 2000. A period of ten (10) minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

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

* * * * *

Proposed Amendments to the Regulations

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

PART 1 — INCOME TAXES

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

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

Par. 2. In §1.988–1 paragraph (f) is revised to read as follows:

§1.988–1 Certain definitions and special rules.

* * * * *

(f) *Hyperinflationary currency—(1) Definition.* For purposes of section 988, a hyperinflationary currency means a currency described in §1.985–1(b)(2)(ii)(D). However, the base period means the thirty-six calendar month period ending on the last day of the taxpayer's (or qualified business unit's) current taxable year. Thus, for example, if for 1996, 1997, and 1998, a country's annual inflation rates are 6 percent, 11 percent, and 90 percent, respectively, the cumulative inflation rate for the three-year base period is 124% [((1.06 x 1.11 x 1.90) - 1.0 = 1.24) x 100 = 124%]. Accordingly, assuming the QBU has a calendar year as its taxable year, the currency of the country is hyperinflationary for the 1998 taxable year.

(2) *Effective date.* Paragraph (f)(1) shall apply to transactions entered into after February 14, 2000.

* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 12, 2000, 8:45 a.m., and published in the issue of the Federal Register for January 13, 2000, 65 F.R. 2084)

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C.—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedral Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List[1]

Bulletins 2000–1 through 2000–4

Announcements:

2000–1, 2000–2 I.R.B. *294*
2000–2, 2000–2 I.R.B. *295*
2000–3, 2000–2 I.R.B. *296*
2000–4, 2000–3 I.R.B. *317*
2000–5, 2000–4 I.R.B. *427*
2000–6, 2000–4 I.R.B. *428*

Notices:

2000–1, 2000–2 I.R.B. *288*
2000–3, 2000–4 I.R.B. *413*
2000–4, 2000–3 I.R.B. *313*
2000–5, 2000–3 I.R.B. *314*
2000–6, 2000–3 I.R.B. *315*
2000–7, 2000–4 I.R.B. *419*
2000–8, 2000–4 I.R.B. *420*

Proposed Regulations:

REG–101492–98, 2000–3 I.R.B. *326*
REG–106012–98, 2000–2 I.R.B. *290*
REG–105606–99, 2000–4 I.R.B. *421*
REG–116704–99, 2000–3 I.R.B. *325*

Revenue Procedures:

2000–1, 2000–1 I.R.B. *4*
2000–2, 2000–1 I.R.B. *73*
2000–3, 2000–1 I.R.B. *103*
2000–4, 2000–1 I.R.B. *115*
2000–5, 2000–1 I.R.B. *158*
2000–6, 2000–1 I.R.B. *187*
2000–7, 2000–1 I.R.B. *227*
2000–8, 2000–1 I.R.B. *230*
2000–9, 2000–2 I.R.B. *280*
2000–10, 2000–2 I.R.B. *287*
2000–11, 2000–3 I.R.B. *309*
2000–12, 2000–4 I.R.B. *387*

Revenue Rulings:

2000–1, 2000–2 I.R.B. *250*
2000–2, 2000–3 I.R.B. *305*
2000–3, 2000–3 I.R.B. *297*
2000–4, 2000–4 I.R.B. *331*

Treasury Decisions:

8849, 2000–2 I.R.B. *245*
8850, 2000–2 I.R.B. *265*
8851, 2000–2 I.R.B. *275*
8852, 2000–2 I.R.B. *253*
8853, 2000–4 I.R.B. *377*
8854, 2000–3 I.R.B. *306*
8855, 2000–4 I.R.B. *374*
8856, 2000–3 I.R.B. *298*
8857, 2000–4 I.R.B. *365*
8858, 2000–4 I.R.B. *332*

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1999–27 through 1999–52 is in Internal Revenue Bulletin 2000–1, dated January 3, 2000.

Finding List of Current Action on Previously Published Items[1]

Bulletins 2000–1 through 2000–4

Notices:

97–19
Modified by
Rev. Proc. 2000–1, 2000–1 I.R.B. *4*

98–52
Modified by
Notice 2000–3, 2000–4 I.R.B. *413*

99–8
Obsoleted by
Rev. Proc. 2000–12, 2000–4 I.R.B. *387*

Revenue Procedures:

92–13
Modified, amplified, and superseded by
Rev. Proc. 2000–11, 2000–3 I.R.B. *309*

92–13A
Modified, amplified, and superseded by
Rev. Proc. 2000–11, 2000–3 I.R.B. *309*

94–12
Modified, amplified, and superseded by
Rev. Proc. 2000–11, 2000–3 I.R.B. *309*

96–13
Modified by
Rev. Proc. 2000–1, 2000–1 I.R.B. *4*

98–27
Superseded by
Rev. Proc. 2000–12, 2000–4 I.R.B. *387*

98–64
Superseded by
Rev. Proc. 2000–9, 2000–2 I.R.B. *280*

99–1
Superseded by
Rev. Proc. 2000–1, 2000–1 I.R.B. *4*

99–2
Superseded by
Rev. Proc. 2000–2, 2000–1 I.R.B. *73*

99–3
Superseded by
Rev. Proc. 2000–3, 2000–1 I.R.B. *103*

99–4
Superseded by
Rev. Proc. 2000–4, 2000–1 I.R.B. *115*

99–5
Superseded by
Rev. Proc. 2000–5, 2000–1 I.R.B. *158*

99–6
Superseded by
Rev. Proc. 2000–6, 2000–1 I.R.B. *187*

99–7
Superseded by
Rev. Proc. 2000–7, 2000–1 I.R.B. *227*

99–8
Superseded by
Rev. Proc. 2000–8, 2000–1 I.R.B. *230*

99–49
Modified and amplified by both
Notice 2000–4, 2000–3 I.R.B. *313* and
Rev. Rul. 2000–4, 2000–4 I.R.B. *331*

Revenue Procedures continued

99–51
Superseded by
Rev. Proc. 2000–3, 2000–1 I.R.B. *103*

Treasury Decisions:

8734
Modified by
T.D. 8856, 2000–3, I.R.B. *298*

8804
Modified by
T.D. 8856, 2000–3, I.R.B. *298*

[1] A cumulative list of previously published items in Internal Revenue Bulletins 1999–27 through 1999–52 is in Internal Revenue Bulletin 2000–1, dated January 3, 2000.

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