Internal Revenue
bulletin

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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. 2003–32, page 689.
Scholarship grants, employer-related private foundations. This ruling states that for purposes of sections 117 and 4945 of the Code, scholarships and educational grants awarded by a private foundation under an employer-related program to employees and their children, when the employee is a victim killed or seriously injured in a qualified disaster, may be awarded without regard to the percentage guidelines in Rev. Proc. 76–47, 1976–2 C.B. 670. Thus, grants awarded under such a program will be described in section 4945(g)(1) and will not be taxable expenditures under section 4945(d)(3).

Rev. Rul. 2003–35, page 687.
Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for April 2003.

T.D. 9047, page 676.
Final regulations apply to certain transactions or events that result in a Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT) owning property that has a basis determined by reference to a C corporation's basis in the property. These regulations affect RICs, REITs, and C corporations and clarify the tax treatment of transfers of C corporation property to a RIC or REIT.

T.D. 9049, page 685.
Final regulations under section 705 of the Code provide guidance for making basis adjustments necessary to coordinate sections 705 and 1032 in situations in which a corporation owns a direct or indirect interest in a partnership that holds stock in that corporation.

Notice 2003–18, page 699.
Disaster relief grants; businesses. This notice provides answers to frequently asked questions for businesses not exempt from federal income tax regarding the tax treatment of grant payments the Empire State Development Corporation, in coordination with the New York City Economic Development Corporation, will make under three grant programs to businesses located in the area of the World Trade Center attacks.

EXEMPT ORGANIZATIONS

Rev. Rul. 2003–32, page 689.
Scholarship grants, employer-related private foundations. This ruling states that for purposes of sections 117 and 4945 of the Code, scholarships and educational grants awarded by a private foundation under an employer-related program to employees and their children, when the employee is a victim killed or seriously injured in a qualified disaster, may be awarded without regard to the percentage guidelines in Rev. Proc. 76–47, 1976–2 C.B. 670. Thus, grants awarded under such a program will be described in section 4945(g)(1) and will not be taxable expenditures under section 4945(d)(3).

EXCISE TAX

Rev. Rul. 2003–32, page 689.
Scholarship grants, employer-related private foundations. This ruling states that for purposes of sections 117 and 4945 of the Code, scholarships and educational grants awarded by a private foundation under an employer-related program to employees and their children, when the employee is a victim killed or seriously injured in a qualified disaster, may be awarded without regard to the percentage guidelines in Rev. Proc. 76–47, 1976–2 C.B. 670. Thus, grants awarded under such a program will be described in section 4945(g)(1) and will not be taxable expenditures under section 4945(d)(3).

(Continued on the next page)

Department of the Treasury
Internal Revenue Service

ADMINISTRATIVE

T.D. 9044, page 690.
Final regulations under section 6103 of the Code require contractors who engage in tax administration services to notify their officers and employees of the prohibitions against and penalties for unauthorized disclosure and inspection of returns or return information.

T.D. 9050, page 693.
Final regulations implement changes to sections 7433 and 7426 of the Code. Section 7433 provides for the recovery of damages caused by the willful violation of the automatic stay or discharge provisions of the Bankruptcy Code by an employee or officer of the Service. Section 7426 provides for the recovery of damages associated with certain wrongful levies.

Notice 2003–19, page 703.
This notice advises taxpayers of the proper address for filing certain elections, statements, and other documents with the Service as a result of the reorganization, including with respect to offices or officials that no longer exist as part of the reorganization.

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 Other Related Items, and Subpart B, Legislation and Related Committee Reports.

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

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

The 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.

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2003. See Rev. Rul. 2003–35, page 687.

Section 102.—Gifts and Inheritances

26 CFR 1.102–1: Gifts and inheritances.

Why are grant payments made to businesses under the World Trade Center grant program not excluded from a grant recipient's gross income as a gift under section 102(a)? See Notice 2003–18, page 699.

Section 118.—Contributions to the Capital of a Corporation

26 CFR 1.118–1: Contributions to the capital of a corporation.

Are grant payments made to businesses under the World Trade Center grant programs excluded from gross income as contributions to capital under section 118? See Notice 2003–18, page 699.

Section 139.—Disaster Relief Payments

Why are grant payments made to businesses under the World Trade Center grant programs not excluded from a recipient's gross income as qualified disaster relief payments under section 139? See Notice 2003–18, page 699.

Section 165.—Losses

26 CFR 1.165–1: Losses.

Must recipients of grant payments made under the World Trade Center grant programs reduce the amount of an allowable casualty loss deduction under section 165 or include in gross income all or part of a casualty loss claimed in a prior year? See Notice 2003–18, page 699.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2003. See Rev. Rul. 2003–35, page 687.

Section 337.—Nonrecognition for Property Distributed to Parent in Complete Liquidation of Subsidiary

26 CFR 1.337(d)–6: New transitional rules imposing tax on property owned by a C corporation that becomes property of a RIC or REIT.

T.D. 9047

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

Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that apply to certain transactions or events that result in a Regulated Investment Company [RIC] or a Real Estate Investment Trust [REIT] owning property that has a basis determined by reference to a C corporation's basis in the property. These regulations affect RICs, REITs, and C corporations and clarify the tax treatment of transfers of C corporation property to a RIC or REIT.

DATES: *Effective Date:* These regulations are effective March 18, 2003.

Applicability Dates: For dates of applicability, see §§1.337(d)–5(d), 1.337(d)–6(e) and 1.337(d)–7(f).

FOR FURTHER INFORMATION CONTACT: Jennifer D. Sledge, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has 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(d)) under control number 1545–1672. This information is required to obtain a benefit, *i.e.*, to elect to recognize gain as if the C corporation had sold the property at fair market value or to elect section 1374 treatment.

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 assigned by the Office of Management and Budget.

The estimated annual burden per respondent is 30 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, 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 a collection of information must be retained as long as their contents might 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 contains amendments to 26 CFR part 1. On February 7, 2000, temporary regulations (T.D. 8872, 2000–1 C.B. 639 [65 FR 5775]) (the 2000 temporary regulations) relating to certain transactions or events that result in a RIC or REIT owning property that has a basis determined by reference to a C corporation's basis in the property were published in the **Federal Register**. A notice of proposed rulemaking (REG–209135–88, 2000–1 C.B.

681 [65 FR 5805]) cross-referencing the temporary regulations was published in the **Federal Register** for the same day. The 2000 temporary regulations were intended to carry out the purposes of the repeal of the *General Utilities* doctrine as enacted in the Tax Reform Act of 1986 (the 1986 Act) (Public Law 99–514, 100 Stat. 2085), as amended by the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647, 102 Stat. 3342).

The 1986 Act amended sections 336 and 337 to require corporations to recognize gain or loss on the distribution of property in connection with complete liquidations other than certain subsidiary liquidations. Section 337(d) directs the Secretary to prescribe regulations as may be necessary to carry out the purposes of the *General Utilities* repeal, including rules to "ensure that such purposes may not be circumvented . . . through the use of a regulated investment company, a real estate investment trust, or tax-exempt entity . . . ."

The 2000 temporary regulations also reflected the principles set forth in Notice 88–19, 1988–1 C.B. 486, in which the IRS announced its intention to promulgate regulations under the authority of section 337(d) with respect to transactions or events that result in a RIC or REIT owning property that has a basis determined by reference to a C corporation's basis (a carryover basis). Notice 88–19 provided that the regulations would apply with respect to the net built-in gain of C corporation assets that become assets of a RIC or REIT by the qualification of a C corporation as a RIC or REIT or by the transfer of assets of a C corporation to a RIC or REIT (a conversion transaction). The notice further provided that, where the regulations apply, the C corporation would be treated, for all purposes, as if it had sold all of its assets at their respective fair market values and immediately liquidated. The notice provided, however, that the regulations would not allow the recognition of a net loss and that immediate gain recognition could be avoided if the C corporation that qualified as a RIC or REIT or the transferee RIC or REIT, as the case may have been, elected to be subject to tax under section 1374 with respect to the C corporation property. Notice 88–19 also indicated that the regulations would apply retroactively to June 10, 1987.

A public hearing on the cross-referenced notice of proposed rulemaking was held on May 10, 2000. Written or electronic comments responding to the notice of proposed rulemaking were received. After consideration of these comments, Treasury and the IRS decided to issue two new sets of temporary regulations. On January 2, 2002, temporary regulations (T.D. 8975, 2002–1 C.B. 379 [67 FR 8]) (the 2002 temporary regulations) were published in the **Federal Register**. The regulations under §1.337(d)–6T apply to conversion transactions occurring on or after June 10, 1987, and before January 2, 2002, and the regulations under §1.337(d)–7T apply to conversion transactions occurring on or after January 2, 2002. A notice of proposed rulemaking (REG–142299–01 and REG–209135–88, 2002–1 C.B. 418 [67 FR 48]) cross-referencing the temporary regulations was published in the **Federal Register** for the same day.

The regulations under §1.337(d)–6T provide that, if property of a C corporation that is not a RIC or REIT becomes the property of a RIC or REIT in a conversion transaction, then the C corporation is subject to deemed sale treatment, unless the RIC or REIT elects to be subject to section 1374 treatment. Thus, the C corporation generally recognizes gain and loss as if it sold the property converted to RIC or REIT property or transferred to the RIC or REIT (the converted property) to an unrelated party at fair market value immediately before the conversion transaction. If the C corporation recognizes net gain on the deemed sale, then the basis of the converted property in the hands of the RIC or REIT is adjusted to its fair market value immediately before the conversion transaction. The regulations under §1.337(d)–6T do not permit a C corporation to recognize a net loss on the deemed sale. Where there is a net loss, the C corporation recognizes no gain or loss on the deemed sale, and the C corporation's basis in the converted property carries over to the RIC or REIT.

The regulations under §1.337(d)–7T provide that, if property of a C corporation that is not a RIC or REIT becomes the property of a RIC or REIT in a conversion transaction, then the RIC or REIT will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the regulations thereunder, unless the C corporation that qualifies as a RIC or REIT or transfers property to a RIC or REIT elects deemed sale treatment. In most other respects, the regulations under §1.337(d)–7T follow the regulations under §1.337(d)–6T.

No public hearing was requested or held on the 2002 temporary regulations. Written or electronic comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended (the final regulations) by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed below.

Explanation and Summary of Comments

This preamble first discusses a change in the time for making the section 1374 election under §1.337(d)–6. This preamble then discusses the clarification of the rules concerning the use of loss carryforwards, credits and credit carryforwards found in the regulations under both §1.337(d)–6 and §1.337(d)–7. Finally, this preamble discusses the clarification of certain issues related to the special rule for partnerships found in §1.337(d)–7.

Time for Making Section 1374 Election under §1.337(d)–6

As explained above, the regulations under §1.337(d)–6T provide that, if property of a C corporation that is not a RIC or REIT becomes the property of a RIC or REIT in a conversion transaction, then the C corporation is subject to deemed sale treatment, unless the RIC or REIT elects to be subject to section 1374 treatment. Under §1.337(d)–6T(c)(4)(ii), the section 1374 election may be filed by the RIC or REIT with any federal income tax return filed by the RIC or REIT on or before March 15, 2003, provided that the RIC or REIT has reported consistently with such election for all periods. Commentators expressed concern that, in the case of a conversion transaction occurring on January 1, 2002 (the last date of applicability of §1.337(d)–6T), the time limit for making a section 1374 election could preclude a RIC or REIT from extending the due date of its federal income tax return beyond March 15, 2003. In response to this comment, the final regula-

tions under §1.337(d)–6 extend the time for making the section 1374 election to September 15, 2003.

Use of Loss Carryforwards, Credits and Credit Carryforwards

Under the 2002 temporary regulations, recognized built-in gains and recognized built-in losses that have been taxed in accordance with these regulations are treated like other gains and losses of RICs and REITs that are not subject to tax under these regulations. Thus, they are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), net capital gain for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A).

In addition, consistent with section 1374, the 2002 temporary regulations generally allow RICs and REITs to use loss carryforwards and credits and credit carryforwards arising in taxable years for which the corporation that generated the attribute was a C corporation (and not a RIC or REIT) to reduce net recognized built-in gain and the tax thereon, subject to the limitations imposed by sections 1374(b)(2) and (b)(3) and §§1.1374–5 and 1.1374–6. The 2002 temporary regulations also provide an ordering rule for applying loss carryforwards, credits, and credit carryforwards to reduce net recognized built-in gain (and the tax thereon) and RIC or REIT taxable income (and the tax thereon). Under this ordering rule, loss carryforwards of a RIC or REIT must be used to reduce net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce investment company taxable income for purposes of section 852(b) or real estate investment trust taxable income for purposes of section 857(b). A similar rule applies to the use of credits and credit carryforwards.

A commentator asked whether the use of loss carryforwards, credits and credit carryforwards for purposes of section 1374 affected the use of loss carryforwards, credits and credit carryforwards for purposes of subchapter M. In response to this comment, the final regulations under §§1.337(d)–6 and 1.337(d)–7 clarify that the use of loss carryforwards, credits and credit carryforwards for purposes of the section 1374 tax does not change the extent to which such loss carryforwards, credits and credit carryforwards can be used for purposes of subchapter M.

Special Rule for Partnerships under §1.337(d)–7

Section §1.337(d)–7T applies to property transferred by a partnership to a RIC or REIT to the extent of any C corporation partner's proportionate share of the transferred property (the partnership rule). The regulations state that, if the partnership elects deemed sale treatment with respect to such transfer, then any gain recognized by the partnership on the deemed sale must be specially allocated to the C corporation partner.

In response to comments, the regulations have been revised to clarify that the principles of section 704(b) and (c) apply in determining the C corporation partner's share of the transferred property. As revised, the regulations provide that the principles of these regulations apply to property transferred by a partnership to a RIC or REIT to the extent of any C corporation partner's distributive share of the gain or loss in the transferred property. The following sections highlight other specific comments received with respect to this rule.

Partnerships with Multiple Corporate Partners

A commentator expressed concern that the partnership rule does not specify whether the C corporation partner or the partnership is considered the transferor for purposes of making the deemed sale election. Further, the commentator asserted that in the case of a partnership with multiple corporate partners, each corporate partner should be allowed to make (or not make) a deemed sale election.

Treasury and the IRS believe that requiring each corporate partner to make a deemed sale election would be inconsistent with section 703(b) (which generally requires that elections be made at the partnership level) and would create unnecessary administrative complexity. Therefore, the final regulations under §1.337(d)–7 retain the rule under section 703(b) that the deemed sale election is made at the partnership level.

Contribution of Loss Assets by Partnership

Under the partnership rule, if a partnership were to elect deemed sale treatment under §1.337(d)–7T, any gain recognized by the partnership on the deemed sale is allocated to the C corporation partner. A commentator expressed concern that if the contribution by the partnership to a RIC or REIT includes multiple assets, the deemed sale may generate losses on certain assets and gain on others even though there is an overall net built-in gain. The commentator suggested that losses recognized by the partnership must also be allocated to the C corporation partner.

Under §1.337(d)–7T, when a partnership elects deemed sale treatment, only net gains are recognized. If a net gain is recognized, the C corporation partner will receive the benefit of offsetting losses (as a result of the reduction in net gain). The final regulations under §1.337(d)–7 have been modified to clarify that the gain allocated to the C corporation partner on a deemed sale transaction is the C corporation partner's distributive share of the net gain in the assets transferred to the RIC or REIT by the partnership.

Allocation of Gain or Loss on Subsequent Sale of RIC or REIT Stock

Under section 358, a partnership that elects deemed sale treatment under §1.337(d)–7T(c) with respect to a conversion transaction increases its basis in the RIC or REIT stock by the net gain recognized on such transaction. A commentator suggested that the C corporation partner should be allowed to use this basis increase to offset any gain or loss recognized by the partnership on the eventual sale of the RIC or REIT stock.

Treasury and the IRS agree with this comment. Accordingly, the final regulations under §1.337(d)–7 provide that any adjustment to the basis of the RIC or REIT stock held by the partnership as a result of electing deemed sale treatment will constitute an adjustment to the basis of that stock with respect to the C corporation partner only.

Partnerships with Tax-Exempt Partners

A commentator expressed concern that the partnership rule in §1.337(d)–7T may have an unintended punitive effect when the C corporation partner is a tax-exempt entity. Tax-exempt entities that are partners in a partnership that holds debt financed property are subject to tax under the unrelated business income tax (UBIT) rules unless certain criteria are satisfied. One of these criteria (the fractions rule) requires that: (1) the tax-exempt partner's share of overall partnership income for any tax year is no greater than its smallest share of partnership loss in any tax year; and (2) each allocation with respect to the partnership has substantial economic effect within the meaning of section 704(b)(2). The commentator expressed concern that the special allocation of gain to the tax-exempt partner that is required by §1.337(d)–7T when the partnership makes a deemed sale election may violate the fractions rule, tainting all income from the partnership for UBIT purposes.

In response to this comment, Treasury and the IRS have amended the regulations under section 514 to provide that allocations that are mandated by statute or regulation (other than subchapter K of chapter 1 of the Internal Revenue Code and the regulations thereunder) are not considered for purposes of determining qualification under the fractions rule. This rule applies to partnership allocations made in taxable years beginning on or after January 1, 2002.

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 and, because the regulations do not impose a collection of information on small entities, 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 Code, these final regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Jennifer D. Sledge of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury Department and the IRS 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 removing the entries for "Section 1.337(d)–5T", "Section 1.337(d)–6T", and "Section 1.337(d)–7T" and adding entries in numerical order to read in part as follows:

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

Section 1.337(d)–5 also issued under 26 U.S.C. 337.

Section 1.337(d)–6 also issued under 26 U.S.C. 337.

Section 1.337(d)–7 also issued under 26 U.S.C. 337. * * *

§1.337(d)–5T [Redesignated as §1.337(d)–5]

Par. 2. Section 1.337(d)–5T is redesignated as §1.337(d)–5 and the language "(temporary)" is removed from the end of the section heading.

Par. 3. Newly designated §1.337(d)–5 is amended as follows:

1. In paragraph (b)(3), first sentence, the reference to "§1.337(d)–5T(b)" is removed and "paragraph (b) of this section" is added in its place.

2. In paragraph (d), third sentence, the references to "§1.337(d)–5T(b)(1)" and "§1.337(d)–6T" are removed and "paragraph (b)(1) of this section" and "§1.337(d)–6" are added in their places, respectively.

3. In paragraph (d), fourth sentence, the reference to "§1.337(d)–6T" is removed and "§1.337(d)–6" is added in its place.

4. In paragraph (d), last sentence, the reference to "§1.337(d)–7T" is removed and "§1.337(d)–7" is added in its place.

Par. 4. Section 1.337(d)–6 is added to read as follows:

§1.337(d)–6 New transitional rules imposing tax on property owned by a C corporation that becomes property of a RIC or REIT.

(a) *General rule*—(1) *Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation (as defined in paragraph (a)(2)(i) of this section) becomes the property of a RIC or REIT (the converted property) in a conversion transaction (as defined in paragraph (a)(2)(ii) of this section), then deemed sale treatment will apply as described in paragraph (b) of this section, unless the RIC or REIT elects section 1374 treatment with respect to the conversion transaction as provided in paragraph (c) of this section. See paragraph (d) of this section for exceptions to this paragraph (a).

(2) *Definitions*—(i) *C corporation.* For purposes of this section, the term *C corporation* has the meaning provided in section 1361(a)(2) except that the term does not include a RIC or REIT.

(ii) *Conversion transaction.* For purposes of this section, the term *conversion transaction* means the qualification of a C corporation as a RIC or REIT or the transfer of property owned by a C corporation to a RIC or REIT.

(b) *Deemed sale treatment*—(1) *In general.* If property owned by a C corporation becomes the property of a RIC or REIT in a conversion transaction, then the C corporation recognizes gain and loss as if it sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in paragraph (b)(3) of this section). This paragraph (b) does not apply if its application would result in the recognition of a net loss. For this purpose, *net loss* is the excess of aggregate losses over aggregate gains (including items of income), without regard to character.

(2) *Basis adjustment.* If a corporation recognizes a net gain under paragraph (b)(1) of this section, then the converted property has a basis in the hands of the RIC or REIT equal to the fair market value of such property on the deemed sale date.

(3) *Deemed sale date*—(i) *RIC or REIT qualifications.* If the conversion transaction is a qualification of a C corporation as a RIC or REIT, then the deemed sale date is the end of the last day of the C corpo-

ration's last taxable year before the first taxable year in which it qualifies to be taxed as a RIC or REIT.

(ii) *Other conversion transactions.* If the conversion transaction is a transfer of property owned by a C corporation to a RIC or REIT, then the deemed sale date is the end of the day before the day of the transfer.

(4) *Example.* The rules of this paragraph (b) are illustrated by the following example:

Example. Deemed sale treatment on merger into RIC. (i) X, a calendar-year taxpayer, has qualified as a RIC since January 1, 1991. On May 31, 1994, Y, a C corporation and calendar-year taxpayer, transfers all of its property to X in a transaction that qualifies as a reorganization under section 368(a)(1)(C). X does not elect section 1374 treatment under paragraph (c) of this section and chooses not to rely on §1.337(d)–5. As a result of the transfer, Y is subject to deemed sale treatment under this paragraph (b) on its tax return for the short taxable year ending May 31, 1994. On May 31, 1994, Y's only assets are Capital Asset, which has a fair market value of $100,000 and a basis of $40,000 as of the end of May 30, 1994, and $50,000 cash. Y also has an unrestricted net operating loss carryforward of $12,000 and accumulated earnings and profits of $50,000. Y has no taxable income for the short taxable year ending May 31, 1994, other than gain recognized under this paragraph (b). In 1997, X sells Capital Asset for $110,000. Assume the applicable corporate tax rate is 35%.

(ii) Under this paragraph (b), Y is treated as if it sold the converted property (Capital Asset and $50,000 cash) at fair market value on May 30, 1994, recognizing $60,000 of gain ($150,000 amount realized - $90,000 basis). Y must report the gain on its tax return for the short taxable year ending May 31, 1994. Y may offset this gain with its $12,000 net operating loss carryforward and will pay tax of $16,800 (35% of $48,000).

(iii) Under section 381, X succeeds to Y's accumulated earnings and profits. Y's accumulated earnings and profits of $50,000 increase by $60,000 and decrease by $16,800 as a result of the deemed sale. Thus, the aggregate amount of subchapter C earnings and profits that must be distributed to satisfy section 852(a)(2)(B) is $93,200 ($50,000 + $60,000 - $16,800). X's basis in Capital Asset is $100,000. On X's sale of Capital Asset in 1997, X recognizes $10,000 of gain, which is taken into account in computing X's net capital gain for purposes of section 852(b)(3).

(c) *Election of section 1374 treatment*—(1) *In general*—(i) *Property owned by a C corporation that becomes property of a RIC or REIT.* Paragraph (b) of this section does not apply if the RIC or REIT that was formerly a C corporation or that acquired property from a C corporation makes the election described in paragraph (c)(4) of this section. A RIC or REIT that makes such an election will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the regulations thereunder, as modified by this paragraph (c), as if the RIC or REIT were an S corporation.

(ii) *Property subject to the rules of section 1374 owned by a RIC, REIT, or S corporation that becomes property of a RIC or REIT.* If property subject to the rules of section 1374 owned by a RIC, a REIT, or an S corporation (the predecessor) becomes the property of a RIC or REIT (the successor) in a continuation transaction, the rules of section 1374 apply to the successor to the same extent that the predecessor was subject to the rules of section 1374 with respect to such property, and the 10-year recognition period of the successor with respect to such property is reduced by the portion of the 10-year recognition period of the predecessor that expired before the date of the continuation transaction. For this purpose, a continuation transaction means the qualification of the predecessor as a RIC or REIT or the transfer of property from the predecessor to the successor in a transaction in which the successor's basis in the transferred property is determined, in whole or in part, by reference to the predecessor's basis in that property.

(2) *Modification of section 1374 treatment*—(i) *Net recognized built-in gain for REITs*—(A) *Prelimitation amount.* The prelimitation amount determined as provided in §1.1374–2(a)(1) is reduced by the portion of such amount, if any, that is subject to tax under section 857(b)(4), (5), (6), or (7). For this purpose, the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is computed as follows:

(*1*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(A), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(2) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(2).

(*2*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(B), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(3) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(3).

(B) *Taxable income limitation.* The taxable income limitation determined as provided in §1.1374–2(a)(2) is reduced by an amount equal to the tax imposed under sections 857(b)(5), (6), and (7).

(ii) *Loss carryforwards, credits and credit carryforwards* —(A) *Loss carryforwards.* Consistent with paragraph (c)(1)(i) of this section, net operating loss carryforwards and capital loss carryforwards arising in taxable years for which the corporation that generated the loss was not subject to subchapter M of chapter 1 of the Internal Revenue Code are allowed as a deduction against net recognized built-in gain to the extent allowed under section 1374 and the regulations thereunder. Such loss carryforwards must be used as a deduction against net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce other investment company taxable income for purposes of section 852(b) or other real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(B) *Credits and credit carryforwards.* Consistent with paragraph (c)(1)(i) of this section, minimum tax credits and business credit carryforwards arising in taxable years for which the corporation that generated the credit was not subject to subchapter M of chapter 1 of the Internal Revenue Code are allowed to reduce the tax imposed on net recognized built-in gain under this paragraph (c) to the extent allowed under section 1374 and the regulations thereunder. Such credits and credit carryforwards must be used to reduce the tax imposed under this paragraph (c) on net recognized built-in gain for a taxable year to the greatest extent possible before such credits and credit carryforwards can be used to reduce the tax, if any, on other invest-

ment company taxable income for purposes of section 852(b) or on other real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(iii) *10-year recognition period.* In the case of a conversion transaction that is a qualification of a C corporation as a RIC or REIT, the 10-year recognition period described in section 1374(d)(7) begins on the first day of the RIC's or REIT's first taxable year. In the case of other conversion transactions, the 10-year recognition period begins on the day the property is acquired by the RIC or REIT.

(3) *Coordination with subchapter M rules*—(i) *Recognized built-in gains and losses subject to subchapter M.* Recognized built-in gains and losses of a RIC or REIT are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), capital gains for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A). In computing such income and deduction items, capital loss carryforwards and net operating loss carryforwards that are used by the RIC or REIT to reduce recognized built-in gains are allowed as a deduction, but only to the extent that they are otherwise allowable as a deduction against such income under the Internal Revenue Code (including section 852(b)(2)(B)).

(ii) *Treatment of tax imposed.* The amount of tax imposed under this paragraph (c) on net recognized built-in gain for a taxable year is treated as a loss sustained by the RIC or the REIT during such taxable year. The character of the loss is determined by allocating the tax proportionately (based on recognized built-in gain) among the items of recognized built-in gain included in net recognized built-in gain. With respect to RICs, the tax imposed under this paragraph (c) on net recognized built-in gain is treated as attributable to the portion of the RIC's taxable year occurring after October 31.

(4) *Making the section 1374 election*—(i) *In general.* A RIC or REIT makes a section 1374 election with the following statement: "[Insert name and employer identification number of electing RIC or REIT] elects under §1.337–6(c) to be subject to the rules of section 1374 and the regulations thereunder with respect to its property that formerly was held by a C corporation, [insert name and employer identification number of the C corporation, if different from name and employer identification number of the RIC or REIT]." However, a RIC or REIT need not file an election under this paragraph (c), but will be deemed to have made such an election if it can demonstrate that it informed the Internal Revenue Service prior to January 2, 2002, of its intent to make a section 1374 election. An election under this paragraph (c) is irrevocable.

(ii) *Time for making the election.* An election under this paragraph (c) may be filed by the RIC or REIT with any federal income tax return filed by the RIC or REIT on or before September 15, 2003, provided that the RIC or REIT has reported consistently with such election for all periods.

(5) *Example.* The rules of this paragraph (c) are illustrated by the following example:

Example. Section 1374 treatment on REIT election. (i) X, a C corporation that is a calendar-year taxpayer, elects to be taxed as a REIT on its 1994 tax return, which it files on March 15, 1995. As a result, X is a REIT for its 1994 taxable year and would be subject to deemed sale treatment under paragraph (b) of this section but for X's timely election of section 1374 treatment under this paragraph (c). X chooses not to rely on §1.337(d)–5. As of the beginning of the 1994 taxable year, X's property consisted of Real Property, which is not section 1221(a)(1) property and which had a fair market value of $100,000 and an adjusted basis of $80,000, and $25,000 cash. X also had accumulated earnings and profits of $25,000, unrestricted capital loss carryforwards of $3,000, and unrestricted business credit carryforwards of $2,000. On July 1, 1997, X sells Real Property for $110,000. For its 1997 taxable year, X has no other income or deduction items. Assume the highest corporate tax rate is 35%.

(ii) Upon its election to be taxed as a REIT, X retains its $80,000 basis in Real Property and its $25,000 accumulated earnings and profits. X retains its $3,000 of capital loss carryforwards and its $2,000 of business credit carryforwards. To satisfy section 857(a)(2)(B), X must distribute $25,000, an amount equal to its earnings and profits accumulated in non-REIT years, to its shareholders by the end of its 1994 taxable year.

(iii) Upon X's sale of Real Property in 1997, X recognizes gain of $30,000 ($110,000–$80,000). X's recognized built-in gain for purposes of applying section 1374 is $20,000 ($100,000 fair market value as of the beginning of X's first taxable year as a REIT - $80,000 basis). Because X's $30,000 of net income for the 1997 taxable year exceeds the net recognized built-in gain of $20,000, the taxable income limitation does not apply. X, therefore, has $20,000 net recognized built-in gain for the year. Assuming that X has not used its $3,000 of capital loss carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(2) and §1.1374–5, X is allowed a $3,000 deduction against the $20,000 net recognized built-in gain. X would owe tax of $5,950 (35% of $17,000) on its net recognized built-in gain, except that X may use its $2,000 of business credit carryforwards to reduce this tax, assuming that X has not used the credit carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(3) and §1.1374–6. Thus, X owes tax of $3,950 under this paragraph (c).

(iv) For purposes of subchapter M of chapter 1 of the Internal Revenue Code, X's earnings and profits for the year increase by $26,050 ($30,000 capital gain on the sale of Real Property - $3,950 tax under this paragraph (c)). For purposes of section 857(b)(2) and (b)(3), X's net capital gain for the year is $23,050 ($30,000 capital gain reduced by $3,000 capital loss carryforward and further reduced by $3,950 tax).

(d) *Exceptions*—(1) *Gain otherwise recognized.* Paragraph (a) of this section does not apply to any conversion transaction to the extent that gain or loss otherwise is recognized on such conversion transaction. See, for example, sections 336, 351(b), 351(e), 356, 357(c), 367, 368(a)(2)(F), and 1001.

(2) *Re-election of RIC or REIT status*—(i) *Generally.* Except as provided in paragraphs (d)(2)(ii) and (iii) of this section, paragraph (a)(1) of this section does not apply to any corporation that—

(A) Immediately prior to qualifying to be taxed as a RIC or REIT was subject to tax as a C corporation for a period not exceeding two taxable years; and

(B) Immediately prior to being subject to tax as a C corporation was subject to tax as a RIC or REIT for a period of at least one taxable year.

(ii) *Property acquired from another corporation while a C corporation.* The exception described in paragraph (d)(2)(i) of this section does not apply to property acquired by the corporation while it was subject to tax as a C corporation from any person in a transaction that results in the acquirer's basis in the property being determined by reference to a C corporation's basis in the property.

(iii) *RICs and REITs previously subject to section 1374 treatment.* If the RIC or REIT had property subject to paragraph (c) of this section before the RIC or REIT became subject to tax as a C corporation as described in paragraph (d)(2)(i) of this section, then paragraph (c) of this section applies to the RIC or REIT upon its requali-

fication as a RIC or REIT, except that the 10-year recognition period with respect to such property is reduced by the portion of the 10-year recognition period that expired before the RIC or REIT became subject to tax as a C corporation and by the period of time that the corporation was subject to tax as a C corporation.

(e) *Effective date.* This section applies to conversion transactions that occur on or after June 10, 1987, and before January 2, 2002. In lieu of applying this section, taxpayers generally may apply §1.337(d)–5 to determine the tax consequences (for all taxable years) of any conversion transaction that occurs on or after June 10, 1987, and before January 2, 2002, except that RICs and REITs that are subject to section 1374 treatment with respect to a conversion transaction may not rely on §1.337(d)–5(b)(1), but must apply paragraphs (c)(1)(i), (c)(2)(i), (c)(2)(ii), and (c)(3) of this section, with respect to built-in gains and losses recognized in taxable years beginning on or after January 2, 2002. Taxpayers are not prevented from relying on §1.337(d)–5 merely because they elect section 1374 treatment in the manner described in paragraph (c)(4) of this section instead of in the manner described in §1.337(d)–5(b)(3) and (c). For conversion transactions that occur on or after January 2, 2002, see §1.337(d)–7.

§1.337(d)–6T [Removed]

Par. 5. Section 1.337(d)–6T is removed.

Par. 6. Section 1.337(d)–7 is added to read as follows:

§1.337(d)–7 Tax on property owned by a C corporation that becomes property of a RIC or REIT.

(a) *General rule*—(1) *Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation (as defined in paragraph (a)(2)(i) of this section) becomes the property of a RIC or REIT (the converted property) in a conversion transaction (as defined in paragraph (a)(2)(ii) of this section), then section 1374 treatment will apply as described in paragraph (b) of this section, unless the C corporation elects deemed sale treatment with respect to the conversion transaction as provided in paragraph (c) of this section. See paragraph (d) of this section for exceptions to this paragraph (a).

(2) *Definitions*—(i) *C corporation.* For purposes of this section, the term *C corporation* has the meaning provided in section 1361(a)(2) except that the term does not include a RIC or REIT.

(ii) *Conversion transaction.* For purposes of this section, the term *conversion transaction* means the qualification of a C corporation as a RIC or REIT or the transfer of property owned by a C corporation to a RIC or REIT.

(b) *Section 1374 treatment*—(1) *In general*—(i) *Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation becomes the property of a RIC or REIT in a conversion transaction, then the RIC or REIT will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the regulations thereunder, as modified by this paragraph (b), as if the RIC or REIT were an S corporation.

(ii) *Property subject to the rules of section 1374 owned by a RIC, REIT, or S corporation that becomes property of a RIC or REIT.* If property subject to the rules of section 1374 owned by a RIC, a REIT, or an S corporation (the predecessor) becomes the property of a RIC or REIT (the successor) in a continuation transaction, the rules of section 1374 apply to the successor to the same extent that the predecessor was subject to the rules of section 1374 with respect to such property, and the 10-year recognition period of the successor with respect to such property is reduced by the portion of the 10-year recognition period of the predecessor that expired before the date of the continuation transaction. For this purpose, a continuation transaction means the qualification of the predecessor as a RIC or REIT or the transfer of property from the predecessor to the successor in a transaction in which the successor's basis in the transferred property is determined, in whole or in part, by reference to the predecessor's basis in that property.

(2) *Modification of section 1374 treatment*—(i) *Net recognized built-in gain for REITs*—(A) *Prelimitation amount.* The prelimitation amount determined as provided in §1.1374–2(a)(1) is reduced by the portion of such amount, if any, that is subject to tax under section 857(b)(4), (5), (6), or (7). For this purpose, the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is computed as follows:

(*1*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(A), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(2) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(2).

(*2*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(B), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(3) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(3).

(B) *Taxable income limitation.* The taxable income limitation determined as provided in §1.1374–2(a)(2) is reduced by an amount equal to the tax imposed under section 857(b)(5), (6), and (7).

(ii) *Loss carryforwards, credits and credit carryforwards*—(A) *Loss carryforwards.* Consistent with paragraph (b)(1)(i) of this section, net operating loss carryforwards and capital loss carryforwards arising in taxable years for which the corporation that generated the loss was not subject to subchapter M of chapter 1 of the Internal Revenue Code are allowed as a deduction against net recognized built-in gain to the extent allowed under section 1374 and the regulations thereunder. Such loss carryforwards must be used as a deduction against net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce other investment company taxable income for purposes of section 852(b) or other real estate

investment trust taxable income for purposes of section 857(b) for that taxable year.

(B) *Credits and credit carryforwards.* Consistent with paragraph (b)(1)(i) of this section, minimum tax credits and business credit carryforwards arising in taxable years for which the corporation that generated the credit was not subject to subchapter M of chapter 1 of the Internal Revenue Code are allowed to reduce the tax imposed on net recognized built-in gain under this paragraph (b) to the extent allowed under section 1374 and the regulations thereunder. Such credits and credit carryforwards must be used to reduce the tax imposed under this paragraph (b) on net recognized built-in gain for a taxable year to the greatest extent possible before such credits and credit carryforwards can be used to reduce the tax, if any, on other investment company taxable income for purposes of section 852(b) or on other real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(iii) *10-year recognition period.* In the case of a conversion transaction that is a qualification of a C corporation as a RIC or REIT, the 10-year recognition period described in section 1374(d)(7) begins on the first day of the RIC's or REIT's first taxable year. In the case of other conversion transactions, the 10-year recognition period begins on the day the property is acquired by the RIC or REIT.

(3) *Coordination with subchapter M rules*—(i) *Recognized built-in gains and losses subject to subchapter M.* Recognized built-in gains and losses of a RIC or REIT are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), capital gains for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A). In computing such income and deduction items, capital loss carryforwards and net operating loss carryforwards that are used by the RIC or REIT to reduce recognized built-in gains are allowed as a deduction, but only to the extent that they are otherwise allowable as a deduction against such income under the Internal Revenue Code (including section 852(b)(2)(B)).

(ii) *Treatment of tax imposed.* The amount of tax imposed under this paragraph (b) on net recognized built-in gain for a taxable year is treated as a loss sustained by the RIC or the REIT during such taxable year. The character of the loss is determined by allocating the tax proportionately (based on recognized built-in gain) among the items of recognized built-in gain included in net recognized built-in gain. With respect to RICs, the tax imposed under this paragraph (b) on net recognized built-in gain is treated as attributable to the portion of the RIC's taxable year occurring after October 31.

(4) *Example.* The rules of this paragraph (b) are illustrated by the following example:

Example. Section 1374 treatment on REIT election. (i) X, a C corporation that is a calendar-year taxpayer, elects to be taxed as a REIT on its 2004 tax return, which it files on March 15, 2005. As a result, X is a REIT for its 2004 taxable year and is subject to section 1374 treatment under this paragraph (b). X does not elect deemed sale treatment under paragraph (c) of this section. As of the beginning of the 2004 taxable year, X's property consisted of Real Property, which is not section 1221(a)(1) property and which had a fair market value of $100,000 and an adjusted basis of $80,000, and $25,000 cash. X also had accumulated earnings and profits of $25,000, unrestricted capital loss carryforwards of $3,000, and unrestricted business credit carryforwards of $2,000. On July 1, 2007, X sells Real Property for $110,000. For its 2007 taxable year, X has no other income or deduction items. Assume the highest corporate tax rate is 35%.

(ii) Upon its election to be taxed as a REIT, X retains its $80,000 basis in Real Property and its $25,000 accumulated earnings and profits. X retains its $3,000 of capital loss carryforwards and its $2,000 of business credit carryforwards. To satisfy section 857(a)(2)(B), X must distribute $25,000, an amount equal to its earnings and profits accumulated in non-REIT years, to its shareholders by the end of its 2004 taxable year.

(iii) Upon X's sale of Real Property in 2007, X recognizes gain of $30,000 ($110,000 - $80,000). X's recognized built-in gain for purposes of applying section 1374 is $20,000 ($100,000 fair market value as of the beginning of X's first taxable year as a REIT - $80,000 basis). Because X's $30,000 of net income for the 2007 taxable year exceeds the net recognized built-in gain of $20,000, the taxable income limitation does not apply. X, therefore, has $20,000 net recognized built-in gain for the year. Assuming that X has not used its $3,000 of capital loss carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(2) and §1.1374–5, X is allowed a $3,000 deduction against the $20,000 net recognized built-in gain. X would owe tax of $5,950 (35% of $17,000) on its net recognized built-in gain, except that X may use its $2,000 of business credit carryforwards to reduce the tax, assuming that X has not used the credit carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(3) and §1.1374–6. Thus, X owes tax of $3,950 under this paragraph (b).

(iv) For purposes of subchapter M of chapter 1 of the Internal Revenue Code, X's earnings and profits for the year increase by $26,050 ($30,000 capital gain on the sale of Real Property - $3,950 tax under this paragraph (b)). For purposes of section 857(b)(2) and (b)(3), X's net capital gain for the year is $23,050 ($30,000 capital gain reduced by $3,000 capital loss carryforward and further reduced by $3,950 tax).

(c) *Election of deemed sale treatment*—(1) *In general.* Paragraph (b) of this section does not apply if the C corporation that qualifies as a RIC or REIT or transfers property to a RIC or REIT makes the election described in paragraph (c)(5) of this section. A C corporation that makes such an election recognizes gain and loss as if it sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in paragraph (c)(3) of this section). See paragraph (c)(4) of this section concerning limitations on the use of loss in computing gain. This paragraph (c) does not apply if its application would result in the recognition of a net loss. For this purpose, *net loss* is the excess of aggregate losses over aggregate gains (including items of income), without regard to character.

(2) *Basis adjustment.* If a corporation recognizes a net gain under paragraph (c)(1) of this section, then the converted property has a basis in the hands of the RIC or REIT equal to the fair market value of such property on the deemed sale date.

(3) *Deemed sale date*—(i) *RIC or REIT qualifications.* If the conversion transaction is a qualification of a C corporation as a RIC or REIT, then the deemed sale date is the end of the last day of the C corporation's last taxable year before the first taxable year in which it qualifies to be taxed as a RIC or REIT.

(ii) *Other conversion transactions.* If the conversion transaction is a transfer of property owned by a C corporation to a RIC or REIT, then the deemed sale date is the end of the day before the day of the transfer.

(4) *Anti-stuffing rule.* A C corporation must disregard converted property in computing gain or loss recognized on the conversion transaction under this paragraph (c), if—

(i) The converted property was acquired by the C corporation in a transaction to which section 351 applied or as a contribution to capital;

(ii) Such converted property had an adjusted basis immediately after its acquisition by the C corporation in excess of its fair market value on the date of acquisition; and

(iii) The acquisition of such converted property by the C corporation was part of a plan a principal purpose of which was to reduce gain recognized by the C corporation in connection with the conversion transaction. For purposes of this paragraph (c)(4), the principles of section 336(d)(2) apply.

(5) *Making the deemed sale election.* A C corporation (or a partnership to which the principles of this section apply under paragraph (e) of this section) makes the deemed sale election with the following statement: "[Insert name and employer identification number of electing corporation or partnership] elects deemed sale treatment under §1.337(d)–7(c) with respect to its property that was converted to property of, or transferred to, a RIC or REIT, [insert name and employer identification number of the RIC or REIT, if different from the name and employer identification number of the C corporation or partnership]." This statement must be attached to the federal income tax return of the C corporation or partnership for the taxable year in which the deemed sale occurs. An election under this paragraph (c) is irrevocable.

(6) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

Example 1. Deemed sale treatment on merger into RIC. (i) X, a calendar-year taxpayer, has qualified as a RIC since January 1, 2001. On May 31, 2004, Y, a C corporation and calendar-year taxpayer, transfers all of its property to X in a transaction that qualifies as a reorganization under section 368(a)(1)(C). As a result of the transfer, Y would be subject to section 1374 treatment under paragraph (b) of this section but for its timely election of deemed sale treatment under this paragraph (c). As a result of such election, Y is subject to deemed sale treatment on its tax return for the short taxable year ending May 31, 2004. On May 31, 2004, Y's only assets are Capital Asset, which has a fair market value of $100,000 and a basis of $40,000 as of the end of May 30, 2004, and $50,000 cash. Y also has an unrestricted net operating loss carryforward of $12,000 and accumulated earnings and profits of $50,000. Y has no taxable income for the short taxable year ending May 31, 2004, other than gain recognized under this paragraph (c). In 2007, X sells Capital Asset for $110,000. Assume the applicable corporate tax rate is 35%.

(ii) Under this paragraph (c), Y is treated as if it sold the converted property (Capital Asset and $50,000 cash) at fair market value on May 30, 2004, recognizing $60,000 of gain ($150,000 amount realized - $90,000 basis). Y must report the gain on its tax return for the short taxable year ending May 31, 2004. Y may offset this gain with its $12,000 net operating loss carryforward and will pay tax of $16,800 (35% of $48,000).

(iii) Under section 381, X succeeds to Y's accumulated earnings and profits. Y's accumulated earnings and profits of $50,000 increase by $60,000 and decrease by $16,800 as a result of the deemed sale. Thus, the aggregate amount of subchapter C earnings and profits that must be distributed to satisfy section 852(a)(2)(B) is $93,200 ($50,000 + $60,000 - $16,800). X's basis in Capital Asset is $100,000. On X's sale of Capital Asset in 2007, X recognizes $10,000 of gain which is taken into account in computing X's net capital gain for purposes of section 852(b)(3).

Example 2. Loss limitation. (i) Assume the facts are the same as those described in *Example 1*, but that, prior to the reorganization, a shareholder of Y contributed to Y a capital asset, Capital Asset 2, which has a fair market value of $10,000 and a basis of $20,000, in a section 351 transaction.

(ii) Assuming that Y's acquisition of Capital Asset 2 was made pursuant to a plan a principal purpose of which was to reduce the amount of gain that Y would recognize in connection with the conversion transaction, Capital Asset 2 would be disregarded in computing the amount of Y's net gain on the conversion transaction.

(d) *Exceptions*—(1) *Gain otherwise recognized.* Paragraph (a) of this section does not apply to any conversion transaction to the extent that gain or loss otherwise is recognized on such conversion transaction. See, for example, sections 336, 351(b), 351(e), 356, 357(c), 367, 368(a)(2)(F), and 1001.

(2) *Re-election of RIC or REIT status*—(i) *Generally.* Except as provided in paragraphs (d)(2)(ii) and (iii) of this section, paragraph (a)(1) of this section does not apply to any corporation that—

(A) Immediately prior to qualifying to be taxed as a RIC or REIT was subject to tax as a C corporation for a period not exceeding two taxable years; and

(B) Immediately prior to being subject to tax as a C corporation was subject to tax as a RIC or REIT for a period of at least one taxable year.

(ii) *Property acquired from another corporation while a C corporation.* The exception described in paragraph (d)(2)(i) of this section does not apply to property acquired by the corporation while it was subject to tax as a C corporation from any person in a transaction that results in the acquirer's basis in the property being determined by reference to a C corporation's basis in the property.

(iii) *RICs and REITs previously subject to section 1374 treatment.* If the RIC or REIT had property subject to paragraph (b) of this section before the RIC or REIT became subject to tax as a C corporation as described in paragraph (d)(2)(i) of this section, then paragraph (b) of this section applies to the RIC or REIT upon its requalification as a RIC or REIT, except that the 10-year recognition period with respect to such property is reduced by the portion of the 10-year recognition period that expired before the RIC or REIT became subject to tax as a C corporation and by the period of time that the corporation was subject to tax as a C corporation.

(e) *Special rule for partnerships.* The principles of this section apply to property transferred by a partnership to a RIC or REIT to the extent of any C corporation partner's distributive share of the gain or loss in the transferred property. If the partnership were to elect deemed sale treatment under paragraph (c) of this section in lieu of section 1374 treatment under paragraph (b) of this section with respect to such transfer, then any net gain recognized by the partnership on the deemed sale must be allocated to the C corporation partner, but does not increase the capital account of any partner. Any adjustment to the partnership's basis in the RIC or REIT stock as a result of deemed sale treatment under paragraph (c) of this section shall constitute an adjustment to the basis of that stock with respect to the C corporation partner only. The principles of section 743 apply to such basis adjustment.

(f) *Effective date.* This section applies to conversion transactions that occur on or after January 2, 2002. For conversion transactions that occurred on or after June 10, 1987, and before January 2, 2002, see §§1.337(d)–5 and 1.337(d)–6.

§1.337(d)–7T [Removed]

Par. 7. Section 1.337(d)–7T is removed.

Par. 8. In §1.514(c)–2, paragraph (e)(1)(v) is added to read as follows:

§1.514(c)–2 Permitted allocations under section 514(c)(9)(E).

* * * * *

(e) * * *

(1) * * *

(v) Allocations made in taxable years beginning on or after January 1, 2002, that are mandated by statute or regulation other than subchapter K of chapter 1 of the Internal Revenue Code and the regulations thereunder.

* * * * *

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. In §602.101, paragraph (b) is amended by removing the entries for "1.337(d)–5T", "1.337(d)–6T", and "1.337–7T" and adding entries in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR Part or section where identified or described	Current OMB control No.
*****	
1.337(d)–5	1545–1672
1.337(d)–6	1545–1672
1.337(d)–7	1545–1672
*****	

David A. Mader,
Assistant Deputy Commissioner of Internal Revenue.

Approved March 7, 2003.

Pamela F. Olson,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on March 13, 2003, 1:16 p.m., and published in the issue of the Federal Register for March 18, 2003, 68 F.R. 12817)

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

The adjusted applicable federal long-term rate is set forth for the month of April 2003. See Rev. Rul. 2003–35, page 687.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2003. See Rev. Rul. 2003–35, page 687.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2003. See Rev. Rul. 2003–35, page 687.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2003. See Rev. Rul. 2003–35, page 687.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2003. See Rev. Rul. 2003–35, page 687.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2003. See Rev. Rul. 2003–35, page 687.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2003. See Rev. Rul. 2003–35, page 687.

Section 705.—Determination of Basis of Partner's Interest

26 CFR 1.705–1: Determination of basis of partner's interest.

T.D. 9049

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Amendments to Rules for Determination of Basis of Partner's Interest; Special Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to special rules on determination of basis of a partner's interest under section 705. The final regulations are necessary to coordinate sections 705 and 1032.

DATES: *Effective Date:* These regulations are effective March 18, 2003.

Applicability Date: For dates of applicability, see §1.705–2(e).

FOR FURTHER INFORMATION CONTACT: Barbara (MacMillan) Campbell or Rebekah A. Myers (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 29, 2002, the Treasury Department and the IRS published final regulations (T.D. 8986, 2002–1 C.B. 780 [67 FR 15112]) under section 705 of the Internal Revenue Code (Code) in the **Federal Register**. Those final regulations provide guidance on the coordination of sections 705 and 1032 in situations where a corporation acquires an interest in a partnership that holds stock in that corporation, a section 754 election is not in effect with respect to the partnership for the taxable year in which the corporation acquires the interest, and the partnership later sells or exchanges the stock. During the development of those final regulations, the Treasury Department and the IRS considered other issues related to the coordination of sections 705 and 1032. Accordingly, also on March 29, 2002, the Treasury Department and the IRS published proposed regulations (REG–167648–01, 2002–1 C.B. 790 [67 FR 15132]) to revise the final regulations contained in §1.705–2 of 26 CFR part 1 in the **Federal Register**. No written comments were received in response to the notice of proposed rulemaking, and no public hearing was requested or held. The proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

1. Overview of Proposed Regulations

The proposed regulations apply to situations where a corporation owns a direct or indirect interest in a partnership that owns stock in that corporation, the partnership distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock. As stated in the preamble to the proposed regulations, in these situations it may be inconsistent with the intent of sections 705 and 1032 to increase the basis of the corporation's partnership interest by the full amount of any gain resulting from the partnership's sale or exchange of the stock which is not recognized by the corporation under section 1032.

Accordingly, the proposed regulations revise the purpose statement of §1.705–2(a) to take into account situations involving such partnership distributions. The proposed regulations provide a specific rule implementing the revised purpose in single partnership cases. The proposed regulations also revise §1.705–2(c) to clarify that the tiered partnerships rule applies to situations involving such partnership distributions.

In addition, the proposed regulations clarify that references in the regulations to stock of a corporate partner include any position in stock of a corporate partner to which section 1032 applies.

2. Revisions in Final Regulations

These final regulations follow the proposed regulations but extend the rules of the proposed regulations to situations where a corporation owns a direct or indirect interest in a partnership that owns stock in that corporation, the partnership distributes money or other property to another partner and that partner recognizes loss on the distribution or the basis of the property distributed to that partner is adjusted during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock. The revisions provide a more consistent approach, and better conform these final regulations to the final regulations issued on March 29, 2002, under section 705 (T.D. 8986, 2002–1 C.B. 780).

3. Effective Date

The final regulations apply with respect to sales or exchanges of stock occurring on or after March 18, 2003, except that paragraph (d) applies with respect to sales or exchanges of stock occurring on or after March 29, 2002.

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, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. 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 businesses.

Drafting Information

The principal author of these proposed regulations is Barbara (MacMillan) Campbell of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and the Treasury Department participated in their development.

* * * * *

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 1.705–1 is amended by revising paragraph (a)(7) to read as follows:

§1.705–1 Determination of basis of partner's interest.

(a) * * *

(7) For basis adjustments necessary to coordinate sections 705 and 1032 in certain situations in which a partnership disposes of stock or any position in stock to which section 1032 applies of a corporation that holds a direct or indirect interest in the partnership, see §1.705–2.

* * * * *

Par. 3. Section 1.705–2 is amended as follows:

1. Paragraph (a) is amended by adding a new sentence after the third sentence.

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

3. Paragraph (c)(1) is amended by adding a sentence at the end of the paragraph.

4. Paragraph (d) is added.

5. Paragraph (e) is revised.

The additions and revision read as follows:

§1.705–2 Basis adjustments coordinating sections 705 and 1032.

(a) * * * Similarly, in situations where a section 754 election was not in effect for the year in which a partnership distrib-

utes money or other property to another partner and that partner recognizes gain or loss on the distribution or the basis of the property distributed to that partner is adjusted, the remaining partners' inside basis and outside basis may not be equal.
* * *
* * * * *

(b) * * *

(2) *Required adjustments relating to distributions.* (i) This paragraph (b)(2) applies in situations where a corporation owns a direct or indirect interest in a partnership that owns stock in that corporation, the partnership distributes money or other property to another partner and that partner recognizes gain or loss on the distribution or the basis of the property distributed to that partner is adjusted during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock. In these situations, the increase (or decrease) in the corporation's adjusted basis in its partnership interest resulting from the sale or exchange of the stock equals the amount of gain (or loss) that the corporate partner would have recognized (absent the application of section 1032) if, for the year in which the partnership made the distribution, a section 754 election had been in effect.

(ii) The provisions of this paragraph (b)(2) are illustrated by the following example:

Example. (i) A, B, and corporation C form partnership PRS. A and B each contribute $10,000 and C contributes $20,000 in exchange for a partnership interest. PRS has no liabilities. PRS purchases stock in corporation C for $10,000, which appreciates in value to $70,000. PRS distributes $25,000 to A in complete liquidation of A's interest in PRS in a year for which an election under section 754 is not in effect. PRS later sells the C stock for $70,000. PRS realizes a gain of $60,000 on the sale of the C stock. C's share of the gain is $40,000. Under section 1032, C does not recognize its share of the gain.

(ii) Normally, C would be entitled to a $40,000 increase in the basis of its PRS interest for its allocable share of PRS's gain from the sale of the C stock, but a special rule applies in this situation. If a section 754 election had been in effect for the year in which PRS made the distribution to A, PRS would have been entitled to adjust the basis of partnership property under section 734(b)(1)(A) by $15,000 (the amount of gain recognized by A with respect to the distribution to A under section 731(a)(1)). See §1.734–1(b). Under §1.755–1(c)(1)(ii), the basis adjustment under section 734(b) would have been allocated to the C stock, increasing its basis to $25,000 (where there is a distribution resulting in an adjustment under section 734(b)(1)(A) to the basis of undistributed partnership property, the adjustment is allocated only to capital gain property).

(iii) If a section 754 election had been in effect for the year in which PRS made the distribution to A, the amount of gain that PRS would have recognized upon PRS's disposition of C stock would be $45,000 ($70,000 minus $25,000 basis in the C stock), and the amount of gain C would have recognized upon PRS's disposition of the C stock (absent the application of section 1032) would be $30,000 (C's share of PRS's gain of $45,000 from the stock sale). Accordingly, upon PRS's sale of the C stock, the increase in the basis of C's interest in PRS is $30,000.

(c) * * * (1) * * * Similarly, if a corporation owns an indirect interest in its own stock through a chain of two or more partnerships, and a partnership in the chain distributes money or other property to another partner and that partner recognizes gain or loss on the distribution or the basis of the property distributed to that partner is adjusted during a year in which the partnership does not have an election under section 754 in effect, then upon any subsequent sale or exchange of the stock, the bases of the interests in the partnerships included in the chain shall be adjusted in a manner that is consistent with the purpose of this section.

* * * * *

(d) *Positions in Stock.* For purposes of this section, stock includes any position in stock to which section 1032 applies.

(e) *Effective date.* This section applies to gain or loss allocated with respect to sales or exchanges of stock occurring after December 6, 1999, except that paragraph (d) of this section is applicable with respect to sales or exchanges of stock occurring on or after March 29, 2002, and the fourth sentence of paragraph (a), paragraph (b)(2), and the third sentence of paragraph (c)(1) of this section are applicable with respect to sales or exchanges of stock occurring on or after March 18, 2003.

David A. Mader,
Assistant Deputy Commissioner of Internal Revenue.

Approved March 6, 2003.

Pamela F. Olson,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on March 17, 2003, 8:45 a.m., and published in the issue of the Federal Register for March 18, 2003, 68 F.R. 12815)

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2003. See Rev. Rul. 2003–35, on this page.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2003. See Rev. Rul. 2003–35, on this page.

Section 1033.—Involuntary Conversions

26 CFR 1.1033(a)–1: Involuntary conversions; nonrecognition of gain.

May a business defer, under section 1033, recognition of gain realized on receipt of a grant payment made under the World Trade Center grant program? See Notice 2003–18, page 699.

Section 1274.— Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for April 2003.

Rev. Rul. 2003–35

This revenue ruling provides various prescribed rates for federal income tax purposes for April 2003 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section

1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2003–35 TABLE 1

Applicable Federal Rates (AFR) for April 2003

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-Term				
AFR	1.46%	1.45%	1.45%	1.45%
110% AFR	1.61%	1.60%	1.60%	1.59%
120% AFR	1.75%	1.74%	1.74%	1.73%
130% AFR	1.90%	1.89%	1.89%	1.88%
Mid-Term				
AFR	2.96%	2.94%	2.93%	2.92%
110% AFR	3.26%	3.23%	3.22%	3.21%
120% AFR	3.56%	3.53%	3.51%	3.50%
130% AFR	3.86%	3.82%	3.80%	3.79%
150% AFR	4.46%	4.41%	4.39%	4.37%
175% AFR	5.22%	5.15%	5.12%	5.10%
Long-Term				
AFR	4.58%	4.53%	4.50%	4.49%
110% AFR	5.04%	4.98%	4.95%	4.93%
120% AFR	5.51%	5.44%	5.40%	5.38%
130% AFR	5.98%	5.89%	5.85%	5.82%

REV. RUL. 2003–35 TABLE 2

Adjusted AFR for April 2003

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	1.26%	1.26%	1.26%	1.26%
Mid-term adjusted AFR	2.57%	2.55%	2.54%	2.54%
Long-term adjusted AFR	4.41%	4.36%	4.34%	4.32%

REV. RUL. 2003–35 TABLE 3	
Rates Under Section 382 for April 2003	
Adjusted federal long-term rate for the current month	4.41%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.58%

REV. RUL. 2003–35 TABLE 4	
Appropriate Percentages Under Section 42(b)(2) for April 2003	
Appropriate percentage for the 70% present value low-income housing credit	7.87%
Appropriate percentage for the 30% present value low-income housing credit	3.37%

REV. RUL. 2003–35 TABLE 5	
Rate Under Section 7520 for April 2003	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	3.6%

Section 1288.—Treatment of Original Issue Discounts on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2003. See Rev. Rul. 2003–35, page 687.

Section 4945.—Taxes on Taxable Expenditures

26 CFR 53.4945–4: Grants to individuals. (Also §117; §1.117–1.)

Scholarship grants, employer-related private foundations. This ruling states that for purposes of sections 117 and 4945 of the Code, scholarships and educational grants awarded by a private foundation under an employer-related program to employees and their children, when the employee is a victim killed or seriously injured in a qualified disaster, may be awarded without regard to the percentage guidelines in Rev. Proc. 76–47, 1976–2 C.B. 670. Thus, grants awarded under such a program will be described in section 4945(g)(1) and will not be taxable expenditures under section 4945(d)(3).

Rev. Rul. 2003–32

ISSUE

If a private foundation awards educational grants to employees or children of employees of a particular employer who are victims of a qualified disaster as defined in § 139 of the Internal Revenue Code, and the educational grants do not satisfy the percentage test of Rev. Proc. 76–47, 1976–2 C.B. 670, are these educational grants treated as scholarships subject to the provisions of § 117 and not treated as taxable expenditures under § 4945(d)(3)?

FACTS

The foundation is exempt from federal income tax under § 501(c)(3) and is a private foundation under § 509(a). The foundation has applied under § 4945(g) for approval of its proposed scholarship program. The foundation intends to provide scholarships to employees or children of employees of a particular employer if the employee is seriously injured or killed as a result of a qualified disaster within the meaning of § 139(c)(1), (2), or (3). The foundation will determine whether these criteria are satisfied using objective standards that are consistently applied.

Section 139(c) provides that the term "qualified disaster" includes (1) a disaster that results from a terroristic or military action (as defined in § 692(c)), (2) a Presidentially declared disaster (as defined in § 1033(h)(3)), or (3) a disaster that results from an accident involving a common carrier, or from any other event, which is determined by the Secretary to be of a catastrophic nature.

The group of employees or children of employees from whom grantees are selected is sufficiently broad to constitute a charitable class. The foundation's scholarship program will satisfy the requirements of § 4945(g)(1) and the guidelines of

§§ 4.01 through 4.07 of Rev. Proc. 76–47, 1976–2 C.B. 670; however, the foundation will award grants without regard to the percentage limitation test of § 4.08 of Rev. Proc. 76–47. The foundation intends to make grants to all eligible applicants.

LAW AND ANALYSIS

A grant by a private foundation to an individual for travel, study, or other similar purposes is a taxable expenditure by the private foundation under § 4945(d)(3) unless such grant satisfies the requirements of § 4945(g). Such a grant, awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary, may satisfy the requirements of § 4945(g)(1) if it is demonstrated to the satisfaction of the Secretary that the grant (i) constitutes a scholarship or fellowship grant that is subject to the provisions of § 117(a) as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 and (ii) is to be used for study at an educational organization described in § 170(b)(1)(A)(ii).

When an employer makes educational grants available to its employees on a preferential basis, the employer-employee relationship immediately suggests that the grant may be compensatory. To ensure that employer-related grant programs are outside the pattern of employment and, therefore, not compensatory, substantial factors not related to employment must control and limit grant programs to such an extent that the preferential treatment derived from employment does not continue to be of any significance beyond being an initial qualifier.

Rev. Proc. 76–47, 1976–2 C.B. 670, provides guidelines for determining whether a grant made by a private foundation under an employer-related grant program to an employee or to a child of an employee of the particular employer is a scholarship under §§ 117 and 4945(g)(1), rather than a form of compensation, an employment incentive, or an employee fringe benefit. The Service will assume that grants awarded under an employer-related grant program will be scholarships or fellowship grants under §§ 117 and 4945(g)(1) if the program satisfies the seven conditions in §§ 4.01 through 4.07 and the percentage test described in § 4.08 of Rev. Proc. 76–47.

Rev. Proc. 76–47, 1976–2 C.B. 670, provides that if an employer-related private foundation's educational grant program satisfies the seven conditions of Rev. Proc. 76–47, §§ 4.01 through 4.07, but does not meet the percentage test of § 4.08, then all the facts and circumstances will be reviewed in determining whether the primary purpose of the program is to provide extra compensation or another employment incentive, or whether the primary purpose is to educate recipients in their individual capacities.

For this program, employment is the initial, but not the sole, qualifier. An employee or the child of an employee is eligible for an educational grant only in the event the employee is seriously injured or killed as a result of a qualified disaster. These eligibility criteria provide sufficient assurance that the primary purpose of the grant is to educate recipients in their individual capacities, outside of any pattern of employment, rather than to compensate employees or provide an employment fringe benefit. Therefore, this educational grant program is not required to satisfy the percentage test of § 4.08 because its eligibility requirements meet the facts and circumstances test of Rev. Proc. 76–47.

HOLDING

Under the facts set forth above, grants awarded under the program satisfy the requirements of Rev. Proc. 76–47, 1976–2 C.B. 670, and constitute scholarships subject to the provisions of § 117. Therefore, grants awarded under the program satisfy the requirements of § 4945(g)(1) and will not be taxable expenditures under § 4945(d)(3). This revenue ruling does not address the extent to which the grants meet the requirements of "qualified scholarships" that may be excluded from the gross income of recipients under § 117(a). See Notice 87–31, 1987–1 C.B. 475, for further information relating to the exclusion of qualified scholarships from gross income.

APPLICATION

This ruling also applies to Revenue Procedure 80–39, 1980–2 C.B. 772, which provides parallel guidelines for determining whether educational loans made by a private foundation under an employer-related loan program will satisfy the requirements of § 4945(g)(3) and will not be taxable expenditures under § 4945(d)(3).

DRAFTING INFORMATION

The principal author of this revenue ruling is Janet E. Gitterman of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, contact Ms. Gitterman at (202) 283–9458 (not a toll-free call).

Section 6103.— Confidentiality and Disclosure of Returns and Return Information

26 CFR 301.6103(n)–1: Disclosure of returns and return information in connection with procurement of property and services for tax administration purposes.

T.D. 9044

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

Amendment of 26 CFR §301.6103(n)–1 to Incorporate Taxpayer Browsing Protection Act

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This final regulation requires persons to whom returns or return information is or may be disclosed as authorized by §301.6103(n)–1(a) (generally, contractors employed to perform tax administration services) to notify their officers and employees of the prohibitions against and penalties for unauthorized inspection of returns or return information.

DATES: *Effective Date:* This final regulation is effective March 12, 2003.

FOR FURTHER INFORMATION CONTACT: Carol Marchant, 202–622–4590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in this final rule has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545–1821. The collection of information in this regulation is in §301.6103(n)–1(c). This information is required and will be used to promote compliance by officers and employees with the restrictions of sections 6103, 7213, and 7213A, and to protect the privacy of American taxpayers. The collection of information is required to obtain a benefit. The likely respondents are state or local governments, business or other for-profit institutions, Federal agencies, and/or small businesses or organizations.

Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by May 12, 2003.

Comments are specifically requested concerning: Whether the collection of information is necessary for the proper performance of the functions of the **Internal Revenue Service**, including whether the information will have practical utility; The accuracy of the estimated burden associated with the collection of information (see below); How the quality, utility, and clarity of the information to be collected may be enhanced; How the burden of complying with the collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information. Estimated total annual reporting burden: 250 hours. Estimated average annual burden hours per respondent: 6 minutes. Estimated number of respondents: 2500. Estimated annual frequency of responses: Annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

Under section 7213A of the Internal Revenue Code (Code) as added by Public Law 105–35 (111 Stat. 1104) (the Taxpayer Browsing Protection Act of 1997), any person described in section 6103(n), or an officer or employee of any such person, is prohibited from willfully inspecting any returns or return information, except as authorized by the Code. Any person who violates section 7213A may be subject to a fine in any amount not exceeding $1,000, or imprisonment of not more than one year, or both. Currently, §301.6103(n)–1(c) provides that each officer or employee of any person to whom returns or return information is or may be disclosed as authorized by §301.6103(n)–1(a) must be notified of the prohibitions against unauthorized disclosure of returns or return information, and the potential penalties for such acts, imposed under section 7213. The regulation does not reflect the penalties imposed by section 7213A.

This document adopts a final regulation amending §301.6103(n)–1(c) to reflect the penalties contained in section 7213A. The regulation requires that each officer or employee of any person to whom returns or return information is or may be disclosed as authorized by §301.6103(n)–1(a) must also receive notification of the prohibitions against unauthorized inspection of returns or return information and the potential penalties for such acts, in addition to the notifications of the penalties for unauthorized disclosure. The Internal Revenue Service (IRS) already requires, in all section 6103(n) contracts, that contractors notify their officers and employees of the penalties for unauthorized inspection. The final regulation updates the regulatory requirements to conform to the present law for both unauthorized inspection and disclosure.

Explanation of Provisions

This final regulation adds a requirement that persons to whom returns or return information is or may be disclosed as authorized by §301.6103(n)–1(a) notify their officers and employees that such officers and employees are prohibited from willfully inspecting any returns or return information, except as authorized by the Code, and that they may be subject to a fine in any amount not exceeding $1,000, or imprisonment of not more than one year, or both, for any violation of section 7213A.

The IRS has a number of section 6103(n) agreements with federal agencies. This final regulation also clarifies the penalty provisions that are applicable to officers and employees of Federal agencies who are performing tax administration services for the IRS pursuant to section 6103(n).

Special Analyses

Section 553 of the Administrative Procedure Act (5 U.S.C. chapter 5) requires that a notice of proposed rulemaking be published in the **Federal Register** and, after such notice, that the Federal agency that issued the notice give interested persons an opportunity to participate in the rulemaking through submission of written comments, with or without opportunity for oral presentation. These requirements are subject to certain exceptions set forth in 5 U.S.C. 553(b), including when the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. Because the final regulation merely amends an existing regulation to add an additional notification requirement that has already been imposed administratively, it is determined that the notice and public-comment procedure required by 5 U.S.C. 553 is unnecessary in this case. For the same reason, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(3).

It has also 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. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act

(5 U.S.C. 601–612) do not apply. Pursuant to section 7805(f) of the Code, this regulation was submitted to the Chief Counsel of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this final regulation is Carol Marchant, Office of Associate Chief Counsel (Procedure & Administration), Disclosure and Privacy Law Division.

* * * * *

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 continues to read in part as follows:

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

Par. 2. In §301.6103(n)–1, paragraph (c) is revised and paragraph (f) is added to read as follows:

§301.6103(n)–1 Disclosure of returns and return information in connection with procurement of property and services for tax administration purposes.

* * * * *

(c) *Notification requirements.* Persons to whom returns or return information is or may be disclosed as authorized by paragraph (a) of this section shall provide written notice to their officers or employees —

(1) That returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized by paragraph (a) of this section;

(2) That further inspection of any returns or return information for a purpose or to an extent unauthorized by paragraph (a) of this section constitutes a misdemeanor, punishable upon conviction by a fine of as much as $1,000, or imprisonment for as long as 1 year, or both, together with costs of prosecution;

(3) That further disclosure of any returns or return information for a purpose or to an extent unauthorized by paragraph (a) of this section constitutes a felony, punishable upon conviction by a fine of as much as $5,000, or imprisonment for as long as 5 years, or both, together with the costs of prosecution;

(4) That any such unauthorized further inspection or disclosure of returns or return information may also result in an award of civil damages against any person who is not an officer or employee of the United States in an amount not less than $1,000 for each act of unauthorized inspection or disclosure or the sum of actual damages sustained by the plaintiff as a result of such unauthorized disclosure or inspection as well as an award of costs and reasonable attorneys fees; and

(5) If such person is an officer or employee of the United States, a conviction for an offense referenced in paragraph (c)(2) or (c)(3) of this section shall result in dismissal from office or discharge from employment.

* * * * *

(f) *Effective date.* Section 301.6103(n)–1(c) is applicable on March 12, 2003.

PART 602 — OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In §602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.6103(n)–1	1545–1841
* * * * *	

David A. Mader,
Assistant Deputy Commissioner of Internal Revenue.

Approved February 11, 2003.

Pamela F. Olson,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on March 11, 2003, 8:45 a.m., and published in the issue of the Federal Register for March 12, 2003, 68 F.R. 11739)

Section 7433.—Civil Damages for Certain Unauthorized Collection Actions

26 CFR 301.7433–1: Civil cause of action for certain unauthorized collection actions.

T.D. 9050

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Civil Cause of Action for Damages Caused by Unlawful Tax Collection Actions, Including Actions Taken in Violation of Section 362 or 524 of the Bankruptcy Code

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to civil causes of action for damages caused by unlawful collection actions of officers and employees of the IRS and the awarding of costs and certain fees. The regulations reflect amendments made by the Taxpayer Bill of Rights 2 and the Internal Revenue Service Restructuring and Reform Act of 1998. The regulations affect all persons who suffer damages caused by unlawful collection actions of officers or employees of the IRS.

EFFECTIVE DATES: These regulations are effective March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, (202) 622–3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to civil actions for damages caused by unlawful collection actions of officers or employees of the IRS. The Taxpayer Bill of Rights 2 (TBOR2), Public Law 104–168 (110 Stat. 1465), amended section 7433 of the Internal Revenue Code of 1986 (Code) by increasing the maximum amount of damages a taxpayer may be awarded for unlawful collection actions from $100,000 to $1,000,000. TBOR2 also eliminated the jurisdictional requirement that administrative remedies be exhausted before a court may award damages; TBOR2 authorized the court, however, to reduce damages if it determined that the plaintiff did not exhaust administrative remedies. These TBOR2 provisions were effective for actions of IRS officers or employees after July 30, 1996. The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685), although retaining the pre-existing authorization for an award of damages in the case of reckless or intentional disregard of the Code or regulations, amended section 7433(a) by providing that taxpayers may file actions for damages caused by the negligent disregard of the Code or regulations. RRA 1998 also added subsection (e) to section 7433. This amendment provides that an action for damages could be brought for the IRS's willful violation of section 362 (relating to the automatic stay) or section 524 (relating to the effect of discharge) of the Bankruptcy Code. Actions for damages caused by the violation of section 362 or 524 of the Bankruptcy Code are limited to willful violations. The maximum amount of damages that may be awarded for negligent disregard under section 7433(a) is $100,000. The maximum amount of damages that may be awarded for reckless or intentional disregard under subsection (a) or for willful violations of section 362 or 524 of the Bankruptcy Code under subsection (e) is $1,000,000. RRA 1998 also reinstated the requirement under section 7433 that the plaintiff must exhaust administrative remedies before a court may award damages. These RRA 1998 provisions apply to actions of IRS officers or employees after July 22, 1998.

RRA 1998 also added section 7426(h), which authorizes persons who bring wrongful levy actions under section 7426 to sue for damages caused by the reckless or intentional, or negligent, disregard of any provision of the Code, plus costs of the action. Consistent with section 7433, damages awarded under section 7426(h) are limited to $1,000,000 for reckless or intentional disregard and $100,000 for negligent disregard. In addition, a plaintiff must exhaust administrative remedies before a court may award damages under section 7426(h). The provisions of section 7433 relating to mitigation and the period for bringing an action also apply to actions brought under section 7426(h). IRS published a notice of proposed rulemaking reflecting these changes in the **Federal Register** on March 5, 2002. (REG–107366–00, 2002–1 C.B. 645 [67 FR 9929]). No written comments on the proposed regulations were received. No public hearing was held.

Explanation of Provisions

§301.7426–2

RRA 1998 added subsection (h) to section 7426. Subsection (h) authorizes persons to sue the United States in Federal district court for damages due to a wrongful levy caused by the reckless or intentional, or negligent, disregard of a provision of the Code. Plaintiffs may recover the lesser of actual direct economic damages and costs of the action or $1,000,000 ($100,000 in the case of negligence). The amendment also provided that the rules of section 7433(d) relating to exhaustion of administrative remedies, mitigation of damages, and the period for bringing an action shall apply. The regulations thus adopt rules like those promulgated under section 7433. Plaintiffs must mitigate damages and no damages may be awarded unless the court determines that the plaintiff has exhausted administrative remedies available within the IRS, *e.g.*, by filing an administrative claim for damages. The regulations provide that any action for damages under this section must be brought within two years after the date the action accrues. This two-year limitations period is independent of the nine-month period following the wrongful levy during which the third party may make a claim for wrongfully levied property.

§301.7430–8

Section 7430 provides that reasonable administrative costs may be awarded to the prevailing party in an administrative proceeding brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under Title 26 of the United States Code. Prior to the amendments in RRA 1998, taxpayers generally were not entitled to recover costs for administrative proceedings in connection with collection matters. Accordingly, the cur-

rent regulations exclude such collection matters, including proceedings under sections 7432 and 7433, from the definition of administrative proceedings. To reflect the RRA 1998 amendments, the regulations expand the definition of an administrative proceeding to include any administrative action for damages under section 7433(e) and any procedure or action brought before the IRS seeking relief with respect to a violation by the IRS of section 362 or 524 of the Bankruptcy Code.

The regulations provide that the prevailing party is a party who establishes that, in connection with the collection of his or her federal tax, the IRS has willfully violated a provision of section 362 or 524 of the Bankruptcy Code. The only administrative costs that may be awarded are those incurred after the date of the bankruptcy petition that gave rise to the section 362 stay or section 524 discharge injunction.

A claim with the IRS for administrative costs must be filed within 90 days after the date the IRS mails its decision on the taxpayer's administrative claim for damages under §301.7433–2(e) or claim for relief from a violation of section 362 or 524 of the Bankruptcy Code.

§301.7433–1

Section 3102 of RRA 1998 amended section 7433(a) of the Code by providing that a taxpayer may sue the United States in a district court of the United States for damages caused by the negligent disregard of the Code or regulations in connection with the collection of the taxpayer's tax liability. Section 801 of TBOR2 amended section 7433(b) by increasing the maximum amount of damages that a taxpayer may recover for damages caused by the reckless or intentional disregard of the Code or regulations from $100,000 to $1,000,000. Section 3102 of RRA 1998 caps the amount of damages that a taxpayer may recover for negligent disregard at $100,000. The regulations under §301.7433–1 reflect these changes.

§301.7433–2

RRA 1998 also amended section 7433 by adding subsection (e). Subsection (e) gives taxpayers the right to petition the bankruptcy court to recover damages if, in connection with the collection of a federal tax, any officer or employee of the IRS willfully violates section 362 or 524 of the Bankruptcy Code or any regulation promulgated thereunder. Damages in connection with a claim under section 7433(e) for willful violations of section 362 or 524 are recoverable under section 7433(b) and are subject to the limitations imposed by section 7433(d). Under section 7433(b), if the IRS is found liable, the plaintiff may recover an amount equal to the lesser of $1,000,000 or the actual, direct economic damages sustained by the plaintiff as a proximate result of the IRS's willful action plus costs of the action. A plaintiff may not recover damages for the mere negligent violation of section 362 or 524 of the Bankruptcy Code.

Section 362 relates to the automatic stay, which arises by operation of law when a debtor files a bankruptcy petition. The stay prohibits certain collection actions against the debtor, the debtor's property, and the property of the bankruptcy estate. Prior to enactment of section 7433(e), individuals injured by the IRS's willful violation of the automatic stay could only sue to recover actual damages, including costs and attorneys' fees, under Bankruptcy Code section 362(h). Section 7433(e) provides an alternative cause of action to recover damages, but still permits an individual to recover damages under section 362(h) of the Bankruptcy Code, in lieu of an action under section 7433(e). However, section 7433(e) explicitly provides that administrative and litigation costs incurred in pressing a claim under section 362(h) of the Bankruptcy Code may only be paid pursuant to, and subject to the conditions described in, section 7430 of the Code. Section 7430 authorizes the payment of administrative and litigation costs only if a taxpayer exhausts administrative remedies. The regulations provide that in order to qualify for an award of administrative and litigation costs in an action under section 362(h) of the Bankruptcy Code, a taxpayer must (as in the case of damages actions under section 7433(e)) file an administrative claim with the IRS relating to the violation of the automatic stay.

Section 524 sets forth the effect of a discharge under the Bankruptcy Code. A discharge operates as an injunction against the commencement or continuation of any action to collect a discharged debt as a personal liability of the debtor. Prior to enactment of section 7433(e), a debtor who believed the IRS had willfully violated the discharge injunction could request the Bankruptcy Court under Bankruptcy Code section 105 to hold the IRS in contempt and seek to recover damages under that Bankruptcy Code provision. Section 7433(e) now provides the exclusive remedy for the IRS's willful violation of the discharge injunction.

The regulations set forth procedures relating to these claim and damage allowance provisions. Damages recoverable under section 7433(e) for a violation of the automatic stay or the discharge injunction are limited to (1) the actual, direct economic damages sustained by the taxpayer (and the taxpayer has a duty to mitigate those damages), plus (2) costs of the action. The maximum damage award is $1,000,000. No petition for damages under section 7433(e) may be filed in a bankruptcy court unless the taxpayer first exhausts administrative remedies within the IRS.

Similar to rules previously adopted with respect to other wrongful collection actions, the regulations define direct, economic damages as actual, pecuniary damages sustained by the taxpayer as a result of the willful violation of section 362 or 524 of the Bankruptcy Code. Injuries such as inconvenience, loss of reputation, and emotional distress, are not compensable except to the extent they result in actual pecuniary loss.

The regulations define costs of the action that are recoverable as damages under section 7433(e) as: (1) fees of the clerk and marshal; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of paper necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court appointed experts and interpreters. Costs of the action do not include any costs other than those enumerated in this paragraph.

Reasonable administrative and litigation costs, including attorneys fees, are not recoverable as direct economic damages. These costs are recoverable, if at all, under section 7430. The taxpayer generally will be entitled to reasonable administrative and litigation costs under section 7430 if the taxpayer (1) files an administrative claim with the IRS, (2) establishes that the IRS willfully violated either the automatic stay under Bankruptcy Code section 362 or

the discharge injunction under section 524, (3) substantially prevails with respect to the amount of damages or the most significant issue in controversy, and (4) meets the requirements of sections 7430(c)(4)(A)(ii) regarding net worth.

A petition for damages under section 7433 may not be filed in a bankruptcy court unless the taxpayer first files an administrative claim for damages with the IRS. The claim must be made in writing to the Chief, Local Insolvency Unit, for the judicial district in which the taxpayer filed the underlying bankruptcy case giving rise to the alleged violation. The claim must include: (1) the claimant taxpayer's name, taxpayer identification number, current address, current home and work telephone numbers and any convenient times to be contacted; (2) the court and case number of the bankruptcy case in which the violation occurred; (3) a description, in reasonable detail, of the violation (with copies of any available substantiating documentation or correspondence with the IRS); (4) a description of the injuries incurred by the taxpayer filing the claim (with copies of any available substantiating documentation or evidence); (5) the dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (along with any available substantiating documentation or evidence); and (6) the signature of the taxpayer or any duly authorized representative.

The regulations provide that, after an administrative claim for damages has been filed, a petition for damages under section 7433 may not be filed in a bankruptcy court until the earlier of (1) the time a decision is rendered on the claim or (2) six months from the date the administrative claim is filed. Because a taxpayer must petition the bankruptcy court for damages within two years after the cause of action accrues, the regulations contain an exception for claims filed in the last six months before the two-year limitation period expires. In those circumstances, taxpayers may file petitions for damages at any time after they file their administrative claims and before the period of limitations expires. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

Special Analysis

It has been determined that this final regulation 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 the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the 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 Kevin B. Connelly, Office of Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summonses Division, CC:PA:CBS, IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7426–2 is added to read as follows:

§301.7426–2 Recovery of damages in certain cases.

(a) *In general.* In addition to remedies related to wrongful levy set forth in §301.7426–1(b), if a district court of the United States finds in any action brought under section 7426 that any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregarded any provision of this title, the United States shall be liable to the plaintiff for damages. The plaintiff has a duty to mitigate damages. The total amount of damages recoverable under this section is the lesser of $1,000,000 ($100,000 in the case of negligence), or the sum of—

(1) Actual, direct economic damages as defined in §301.7433–1(b) sustained as a proximate result of the reckless, intentional, or negligent actions of the officer or employee, reduced by the amount of any damages awarded under §301.7426–1(b); and

(2) Costs of the action as defined in §301.7433–1(c).

(b) *Administrative remedies must be exhausted.* The court may not award a judgment for damages under paragraph (a) of this section unless the court determines that the plaintiff has filed an administrative claim pursuant to paragraph (d) of this section, and has satisfied the requirements of paragraph (c) of this section.

(c) *No request for damages in a district court of the United States prior to filing an administrative claim.* (1) Except as provided in paragraph (c)(2) of this section, no request for damages under paragraph (a) of this section shall be maintained in any district court of the United States before the earlier of the following dates—

(i) The date the decision is rendered on a claim filed in accordance with paragraph (d) of this section; or

(ii) The date that is six months after the date an administrative claim is filed in accordance with paragraph (d) of this section.

(2) If an administrative claim is filed in accordance with paragraph (d) of this section during the last six months of the period of limitations described in paragraph (f) of this section, the claimant may file an action in a district court of the United States any time after the administrative claim is filed and before the expiration of the period of limitations.

(d) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for the lesser of $1,000,000 ($100,000 in the case of negligence) or actual, direct economic damages as defined in §301.7433–1(b) shall be sent in writing to the Area Director, Attn: Compliance Technical Support Manager of the area in which the taxpayer currently resides.

(2) *Form.* The administrative claim shall include—

(i) The name, taxpayer identification number, current address and current home and work telephone numbers (indicating any convenient times to be contacted) of the person making the claim;

(ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iii) A description of the damages incurred by the claimant filing the claim (include copies of any available substantiating documentation or evidence);

(iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

(v) The signature of the claimant or duly authorized representative.

(3) *Duly authorized representative.* For purposes of this paragraph (d), a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the claimant before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed to the claimant.

(e) *No liability for damages for any sum in excess of the dollar amount sought in the administrative claim.* See §301.7433–1(f).

(f) *Period of limitations*—(1) *Time for filing.* A civil action under paragraph (a) of this section must be brought in a district court of the United States within two years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the plaintiff has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(g) *Recovery of costs under section 7430.* See §301.7433–1(h).

(h) *Effective date.* This section is applicable March 25, 2003.

Par. 3. Section 301.7430–1 is amended by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g) and (h), respectively, revising the phrase "paragraph (e)(1), (e)(2), (e)(3), or (e)(4) of this section" to read "paragraph (f)(1), (f)(2), (f)(3), or (f)(4) of this section", and adding a new paragraph (e) to read as follows:

§301.7430–1 Exhaustion of administrative remedies.

* * * * *

(e) *Actions involving willful violations of the automatic stay under section 362 or the discharge provisions under section 524 of the Bankruptcy Code*—(1) *Section 7433 claims.* A party has not exhausted administrative remedies within the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code or the discharge provisions under section 524 of the Bankruptcy Code unless it files an administrative claim for damages or for relief from a violation of section 362 or 524 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the judicial district in which the bankruptcy petition that is the basis for the asserted automatic stay or discharge violation was filed pursuant to §301.7433–2(e) and satisfies the other conditions set forth in §301.7433–2(d) prior to filing a petition under section 7433.

(2) *Section 362(h) claims.* A party has not exhausted administrative remedies within the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code unless it files an administrative claim for relief from a violation of section 362 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the judicial district in which the bankruptcy petition that is the basis for the asserted automatic stay violation was filed pursuant to §301.7433–2(e) and satisfies the other conditions set forth in §301.7433–2(d) prior to filing a petition under section 362(h) of the Bankruptcy Code.

* * * * *

§301.7430–2 [Amended]

Par. 4. In §301.7430–2, paragraph (c)(2) is amended by:

1. Adding the language ", except that requests with respect to administrative proceedings defined by §301.7430–8(c) should be made to the Chief, Local Insolvency Unit" at the end of the first sentence.

2. Removing the language "District Director for the district" and adding "Internal Revenue Service office" in its place in the second sentence.

Par. 5. Section 301.7430–3 is amended by:

1. Revising paragraph (a)(4).

2. Paragraph (b) is amended by adding the language ", except those collection actions described by section 7433(e)" at the end of the penultimate sentence.

The revision reads as follows:

§301.7430–3 Administrative proceeding and administrative proceeding date.

(a) * * *

(4) Proceedings in connection with collection actions (as defined in paragraph (b) of this section), including proceedings under section 7432 or 7433, except proceedings brought under section 7433(e) and §301.7433–2 or proceedings otherwise described in §301.7430–8(c). See §301.7430–8.

* * * * *

Par. 6. Section 301.7430–6 is amended by adding a sentence at the end of the section to read as follows:

§301.7430–6 Effective dates.

* * * Sections 301.7430–1(e), 301.7430–2(c)(2), 7430–3(a)(4) and (b) are applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

Par. 7. Section 301.7430–8 is added to read as follows:

§301.7430–8 Administrative costs incurred in damage actions for violations of section 362 or 524 of the Bankruptcy Code.

(a) *In general.* The Internal Revenue Service may grant a taxpayer's request for recovery of reasonable administrative costs incurred in connection with the administrative proceeding before the Internal Revenue Service relating to the willful violation of section 362 or 524 of the Bankruptcy Code only if the taxpayer is a prevailing party.

(b) *Prevailing party.* A taxpayer is a prevailing party for purposes of this section only if—

(1) The taxpayer satisfies the net worth and size limitations in paragraph (f) of §301.7430–5;

(2) The taxpayer establishes that in connection with the collection of his or her federal tax an officer or employee of the Internal Revenue Service has willfully violated a provision of section 362 or 524 of the Bankruptcy Code; and

(3) The position of the Internal Revenue Service in the proceeding was not substantially justified.

(c) *Administrative proceeding.* For purposes of this section, an administrative proceeding is a proceeding related to an administrative claim presented to the Internal Revenue Service seeking relief from a violation of section 362 or 524 of the Bankruptcy Code by the Internal Revenue Service or recovery of damages from the Internal Revenue Service under §301.7433–2(e).

(d) *Costs incurred after filing of bankruptcy petition.* Administrative costs may be recovered only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(e) *Time for filing claim for administrative costs.* (1) For purposes of this section, the taxpayer must file a claim for administrative costs before the Internal Revenue Service not later than 90 days after the date the Internal Revenue Service mails to the taxpayer, or otherwise notifies the taxpayer of, the decision regarding the claim for relief from or damages relating to a violation of the collection stay or the discharge injunction.

(2) If the Internal Revenue Service denies the claim for administrative costs in whole or in part, the taxpayer must file a petition with the Bankruptcy Court for administrative costs no later than 90 days after the date on which the denial of the claim for administrative costs is mailed, or otherwise furnished, to the taxpayer. If the Internal Revenue Service does not respond on the merits to a request by the taxpayer for an award of reasonable administrative costs within six months after such request is filed, the Internal Revenue Service's failure to respond may be considered by the taxpayer as a denial of an award of reasonable administrative costs.

(3) For purposes of paragraphs (e)(1) and (2) of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term legal holiday means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia, the term legal holiday also means a statewide legal holiday in the state where such office is located.

(f) *Effective date.* This section is applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

Par. 8. Section 301.7433–1 is amended as follows:

1. In paragraph (a) introductory text, in the first sentence, the language ", or by reason of negligence," is added after the language "recklessly or intentionally". In addition, the language "$100,000" in the third sentence is removed and "$1,000,000 ($100,000 in the case of negligence)" is added in its place.

2. In paragraph (b)(1), in the first sentence, the language ", or negligent," is added after the language "reckless or intentional".

3. In paragraph (e)(1), in the first sentence, the language "$100,000" is removed and "$1,000,000 ($100,000 in the case of negligence)" is added in its place. In addition, the language "district director (marked for the attention of the Chief, Special Procedures Function) of the district" is removed and "Area Director, Attn: Compliance Technical Support Manager of the area" is added in its place.

4. In paragraph (h), in the penultimate sentence, the language "7432(a)" is removed and "7433(a)" is added in its place.

5. Revising paragraph (i).

The revision reads as follows:

§301.7433–1 Civil cause of action for certain unauthorized collection actions.

* * * * *

(i) *Effective dates.* The portions of this section relating to reckless or intentional acts are applicable to actions taken by Internal Revenue Service officials after July 30, 1996. The portions of this section relating to negligent acts are applicable to actions taken by the Internal Revenue Service officials after July 22, 1998.

Par. 9. Section 301.7433–2 is added to read as follows:

§301.7433–2 Civil cause of action for violation of section 362 or 524 of the Bankruptcy Code.

(a) *In general.* (1) If, in connection with the collection of a federal tax with respect to a taxpayer, an officer or employee of the Internal Revenue Service willfully violates any provision of section 362 (relating to the automatic stay) or section 524 (relating to discharge) of title 11, United States Code, or any regulation promulgated under such provision, the taxpayer may file a petition for damages against the United States in Federal bankruptcy court. The taxpayer has a duty to mitigate damages. The total amount of damages recoverable under this section is the lesser of $1,000,000, or the sum of—

(i) Actual, direct economic damages sustained as a proximate result of the willful actions of the officer or employee; and

(ii) Costs of the action.

(2) An action under this section constitutes the exclusive remedy under the Internal Revenue Code for violations of sections 362 and 524 of the Bankruptcy Code. In addition, taxpayers injured by violations of section 362 of the Bankruptcy Code may maintain actions under section 362(h) of the Bankruptcy Code (relating to an individual injured by a willful violation of the stay). However, any administrative or litigation costs in connection with an action under section 362(h) may be awarded, if at all, only under section 7430 of the Internal Revenue Code.

(b) *Actual, direct economic damages*—(1) *Definition.* See §301.7433–1(b)(1).

(2) *Litigation costs and administrative costs not recoverable as actual, direct economic damages.* Litigation costs and administrative costs are not recoverable as actual, direct economic damages. These costs may be recoverable under section 7430 (see paragraph (h) of this section), or, solely to the extent described in paragraph (c) of this section, as costs of the action.

(c) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the costs set forth in §301.7433–1(c).

(d) *No civil action in federal bankruptcy court prior to filing an administrative claim*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, no action under paragraph (a)(1) of this section shall be maintained in any bankruptcy court before the earlier of the following dates—

(i) The date the decision is rendered on a claim filed in accordance with paragraph (e) of this section; or

(ii) The date that is six months after the date an administrative claim is filed in accordance with paragraph (e) of this section.

(2) *When administrative claim filed in last six months of period of limitations.* If an administrative claim is filed in accordance with paragraph (e) of this section during the last six months of the period of limitations described in paragraph (g) of this section, the taxpayer may petition the bankruptcy court any time after the administrative claim is filed and before the expiration of the period of limitations.

(e) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for the lesser of $1,000,000 or actual, direct economic damages as defined in paragraph (b) of this section shall be sent in writing to the Chief, Local Insolvency Unit, for the judicial district in which the taxpayer filed the underlying bankruptcy case giving rise to the alleged violation.

(2) *Form.* The administrative claim shall include—

(i) The name, taxpayer identification number, current address, and current home and work telephone numbers (with an identification of any convenient times to be contacted) of the taxpayer making the claim;

(ii) The location of the bankruptcy court in which the underlying bankruptcy case was filed and the case number of the case in which the violation occurred;

(iii) A description, in reasonable detail, of the violation (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iv) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(v) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available documentation or evidence); and

(vi) The signature of the taxpayer or duly authorized representative.

(3) *Duly authorized representative defined.* For purposes of this paragraph (e), a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(f) *No action in bankruptcy court for any sum in excess of the dollar amount sought in the administrative claim.* No action for actual, direct economic damages under paragraph (a) of this section may be instituted in federal bankruptcy court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (e) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(g) *Period of limitations*—(1) *Time for filing.* A petition for damages under paragraph (a) of this section must be filed in bankruptcy court within two years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(h) *Recovery of litigation costs and administrative costs under section 7430*—(1) *In general.* Litigation costs, as defined in §301.7433–1(b)(2)(i), including attorneys fees, not recoverable under this section may be recoverable under section 7430 if a taxpayer challenges in whole or in part an Internal Revenue Service denial of an administrative claim for damages by filing a petition in the bankruptcy court. If, following the Internal Revenue Service's denial of an administrative claim for damages, a taxpayer files a petition in the bankruptcy court challenging that denial in whole or in part, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(ii) (relating to net worth and size requirements), the taxpayer will be considered a prevailing party for purposes of section 7430, unless the Internal Revenue Service establishes that the position of the Internal Revenue Service in the proceeding was substantially justified. Such taxpayer will generally be entitled to attorneys' fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph (h), if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that the Internal Revenue Service did not willfully violate Bankruptcy Code section 362 or 524.

(2) *Administrative costs*—(i) *In general.* Administrative costs, as defined in §301.7433–1(b)(2)(ii), including attorneys' fees, not recoverable under this section may be recoverable under section 7430. See §301.7430–8.

(ii) *Limitation regarding recoverable administrative costs.* Administrative costs may be awarded only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(i) *Effective date.* This section is applicable to actions taken by the Internal Revenue Service officials after July 22, 1998.

David A. Mader,
Assistant Deputy Commissioner of Internal Revenue.

Approved March 5, 2003.

Pamela F. Olson,
Assistant Secretary of the Treasury.

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Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2003. See Rev. Rul. 2003–35, page 687.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2003. See Rev. Rul. 2003–35, page 687.

Part III. Administrative, Procedural, and Miscellaneous

Tax Treatment of Grants Made by the Empire State Development Corporation to Businesses to Aid Recovery From the Attack of September 11, 2001, on the World Trade Center

Notice 2003–18

PURPOSE

This notice provides answers to frequently asked questions for businesses not exempt from federal income tax regarding the tax treatment of grant payments the Empire State Development Corporation (the ESDC), in coordination with the New York City Economic Development Corporation (the EDC), will make to businesses under (1) the World Trade Center (WTC) Business Recovery Grant Program, (2) the WTC Small Firm Attraction and Retention Grant Program, and (3) the WTC Job Creation and Retention Program (collectively, the "WTC Grant Programs").

BACKGROUND

The ESDC is a public benefit corporation of the State of New York and the EDC is a non-profit corporation organized by the City of New York. The ESDC will distribute a portion of $2.7 billion in Community Development Block Grants (CDBG) appropriated by Congress to enable New York City to make grants under the WTC Grant Programs. In general, the WTC Grant Programs are intended for businesses that were located in the WTC area (the "Eligible Area" as defined in the guidelines for the WTC Grant Programs) or that intend to relocate there, and had or have specified numbers of "full-time permanent employees" (as defined in the guidelines for the WTC Grant Programs). Grant funds under the WTC Grant Programs are also available to tax-exempt non-profit businesses that meet certain additional criteria. The CDBG funds for the WTC Grant Programs were authorized by § 434 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2002, Pub. L. No. 107–73, 115 Stat. 651, 699 (2001), and Chapter 13 of the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002, Pub. L. No. 107–117, 115 Stat. 2230, 2336 (2002) (the Acts).

WTC Business Recovery Grant Program

The WTC Business Recovery Grant Program (BRGP) provides grants to compensate certain small businesses that were located in the Eligible Area as of September 11, 2001, for certain losses resulting from the attack on the WTC. The BRGP is administered by ESDC in coordination with EDC on behalf of the State of New York. Grant recipients must continue their business operations at the same location or intend to resume them within New York City. The BRGP is intended to compensate qualified businesses for the net economic losses they incurred from September 11, 2001, through December 31, 2001, in connection with the attack on the WTC. Such net economic losses include, but are not limited to:

(1) damage to, or destruction of, real property and other tangible assets, including equipment, furniture and fixtures, supplies and inventory;

(2) financial losses due to business interruption, including reduced business activity;

(3) employee wages paid for work that was not performed and fees for contract services that were not performed;

(4) temporary or permanent relocation expenses; and

(5) debris removal and other clean up costs.

The net economic loss equals the amount of economic loss reduced by other specified governmental grant assistance and by insurance proceeds the business has received or applied for related to its losses.

The amount of a BRGP grant that a business can receive with respect to a particular location equals the lesser of (i) the business' net economic loss or (ii) the maximum grant amount as computed by the ESDC (which can range from $50,000 to $300,000 depending upon the specific area in which the business was located). A business with multiple locations within the Eligible Area may receive a separate grant for each business location. The maximum grant to any business, however, cannot exceed $500,000. The ESDC may require a grant recipient to repay BRGP grant funds under certain circumstances.

WTC Small Firm Attraction and Retention Grant Program

The WTC Small Firm Attraction and Retention Grant Program (SFARG) is administered by the ESDC and the EDC on behalf of the City and State of New York. The SFARG program generally is for businesses employing 200 or fewer full-time permanent employees at an eligible premises. The SFARG program provides grants to small businesses that are at risk of leaving downtown Manhattan that commit to remain in the Eligible Area for at least 5 years beyond their current commitment. It also provides grants to small businesses that were located in or near the WTC that commit to remain in New York City for at least 5 years. The SFARG program will also make grants to businesses (for example, new businesses) that commit to remain in the Eligible Area for at least 5 years.

The amount of a SFARG grant generally is $3,500 per full-time employee. However, a business that was operating in that part of the Eligible Area called the "Restricted Zone" (as defined in the SFARG program guidelines) on September 11, 2001, and remains or relocates within the Eligible Area, is eligible to receive $5,000 per full-time employee. The grants are generally payable in two installments.

Grant recipients must agree to allocate SFARG funds to wages for full-time permanent employees that were on the business' payroll as of the dates it requests the grant disbursements. The ESDC may require a grant recipient to repay SFARG funds under certain circumstances, such as relocating a substantial portion of its business from an eligible premises.

WTC Job Creation and Retention Program

The WTC Job Creation and Retention Program (JCRP) includes grants to certain large businesses displaced from their workspace for at least one month as a result of the September 11, 2001, attack on the WTC, and grants to other affected businesses, including those willing to create new jobs in lower Manhattan. This program generally is for businesses employing 200 or more permanent full-time employees. Busi-

nesses receiving JCRP grants must commit to remain in lower Manhattan for a minimum of 7 years and achieve certain employment goals. Although businesses seeking to locate new operations in lower Manhattan are eligible to receive JCRP grants, priority is given to businesses that were located in the Eligible Area on September 11, 2001.

Businesses must use the grant proceeds exclusively for the following expenses incurred after September 11, 2001:

(1) wages;
(2) payroll taxes;
(3) employee benefits;
(4) rent; and
(5) moveable equipment and furniture.

The program documents do not indicate that a business must have incurred property losses to receive a JCRP grant or that a JCRP grant is intended to compensate for property losses. The ESDC may require a grant recipient to repay JCRP grant funds if a business does not meet its commitment to retain or create jobs for the minimum 7-year period.

Applicable Provisions of Law

Section 61(a) of the Internal Revenue Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Under § 61, Congress intends to tax all gains or undeniable accessions to wealth, clearly realized, over which taxpayers have complete dominion. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955), 1955–1 C.B. 207.

The Internal Revenue Service has consistently concluded that payments to individuals by governmental units under legislatively provided social benefit programs for the promotion of the general welfare are not includible in a recipient's gross income ("general welfare exclusion"). *See, e.g.*, Rev. Rul. 74–205, 1974–1 C.B. 20; Rev. Rul. 98–19, 1998–1 C.B. 840. To qualify under the general welfare exclusion, payments must: (i) be made from a governmental fund, (ii) be for the promotion of general welfare (*i.e.*, generally based on individual or family needs), and (iii) not represent compensation for services. Rev. Rul. 75–246, 1975–1 C.B. 24; Rev. Rul. 82–106, 1982–1 C.B. 16. Payments to businesses generally do not qualify for the exclusion because they are not based on individual or family needs. *See Bailey v. Commissioner*, 88 T.C. 1293, 1300–1301 (1987), *acq.*, 1989–2 C.B. 1; Rev. Rul. 76–131, 1976–1 C.B. 16. Moreover, income-replacement payments (whether to businesses or individuals) do not qualify under the general welfare exclusion. *See* Rev. Rul. 73–408, 1973–2 C.B. 15, Rev. Rul. 76–75, 1976–1 C.B. 14, and *Graff v. Commissioner*, 74 T.C. 743 (1980), *aff'd*, 673 F.2d 784 (5th Cir. 1982).

Section 102(a) provides that the value of property acquired by gift is excluded from gross income. Under § 102(a), a gift must proceed "from a 'detached and disinterested generosity,' . . . 'out of affection, respect, admiration, charity or like impulses.'" *Commissioner v. Duberstein*, 363 U.S. 278, 285 (1960), 1960–2 C.B. 428. On the other hand, payments that proceed "primarily from the 'constraining force of any moral or legal duty' or from 'the incentive of anticipated benefit' of an economic nature" are not gifts. *Duberstein* at 285. Governmental grants in response to a disaster (whether to a business or an individual) generally do not qualify as gifts because the government's intent in making the payments proceeds from a government's duty to relieve the hardship caused by the disaster. In addition, a government can expect an economic benefit from programs that relieve business or individual hardships. *See Kroon v. United States*, Civil No. A–90–71 (D. Alaska 1974), and Rev. Rul. 2003–12, 2003–3 I.R.B. 283.

Section 139(a) excludes from gross income any amount received by an individual as a qualified disaster relief payment. Section 139(b)(1) provides, in part, that the term "qualified disaster relief payment" means any amount paid to or for the benefit of an individual:

(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster (§ 139(b)(1));

(2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence, or repair or replacement of its contents, to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster (§ 139(b)(2)); or

(3) if such amount is paid by a federal, state, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare (§ 139(b)(4)). Thus, § 139(b)(4) codifies (but does not supplant) the administrative general welfare exclusion with respect to certain disaster relief payments to individuals.

Section 118(a) provides that, in the case of a corporation, gross income does not include any contribution to the capital of the taxpayer. Section 1.118–1 of the Income Tax Regulations provides that § 118 also applies to contributions to capital made by persons other than shareholders. For example, the exclusion applies to the value of land or other property contributed to a corporation by a governmental unit or by a civic group for the purpose of inducing the corporation to locate its business in a particular community, or for the purpose of enabling the corporation to expand its operating facilities. However, the exclusion does not apply to any money or property transferred to the corporation in consideration for goods or services rendered, or to subsidies paid for the purpose of inducing the taxpayer to limit production.

The Supreme Court of the United States has also considered the contribution to capital concept. In *Detroit Edison Co. v. Commissioner*, 319 U.S. 98 (1943), 1943 C.B. 1019, the Court held that payments by prospective customers to an electric utility company to cover the cost of extending the utility's facilities to their homes were part of the price of service rather than contributions to capital. The case concerned customers' payments to a utility company for the estimated cost of constructing service facilities that the utility company otherwise was not obligated to provide.

Later, the Court held that payments to a corporation by community groups to induce the location of a factory in their community represented a contribution to capital. *Brown Shoe Co. v. Commissioner*, 339 U.S. 583 (1950), 1950–1 C.B. 38. The Court concluded that the contributions made by the citizens were made without anticipation of any direct service or recompense, but rather with the expectation that the contributions would prove advantageous to the community at large. *Brown* at 591. The contract entered into by the community groups and the corporation provided that in exchange for a contribution of land and cash, the corporation agreed to construct a fac-

tory, operate it for at least 10 years, and meet a minimum payroll. *Brown* at 586.

Finally, in *United States v. Chicago, B. & Q. R. Co.*, 412 U.S. 401 (1973), 1973–2 C.B. 428, the Court, in determining whether a taxpayer was entitled to depreciate the cost of certain facilities that had been funded by the federal government, held that the governmental subsidies were not contributions to the taxpayer's capital. The Court recognized that the holding in *Detroit Edison Co.* had been qualified by its decision in *Brown Shoe Co*. The Court in *Chicago B. & Q. R. Co.* found that the distinguishing characteristic between those two cases was the differing purposes motivating the respective transfers. In *Brown Shoe Co.*, the only expectation of the contributors was that such contributions might prove advantageous to the community at large. Thus, in *Brown Shoe Co.*, because the transfers were made with the purpose, not of receiving direct service or recompense, but only of obtaining advantage for the general community, the result was a contribution to capital.

The Court in *Chicago, B. & Q. R. Co.*, also stated that there were other characteristics of a nonshareholder contribution to capital implicit in *Detroit Edison Co.* and *Brown Shoe Co.* From these two cases, the Court distilled some of the characteristics of a nonshareholder contribution to capital under both the 1939 and 1954 Codes:

1. It must become a permanent part of the transferee's working capital structure;

2. It may not be compensation, such as a direct payment for a specific, quantifiable service provided for the transferor by the transferee;

3. It must be bargained for;

4. The asset transferred must foreseeably result in benefit to the transferee in an amount commensurate with its value; and

5. The asset ordinarily, if not always, will be employed in or contribute to the production of additional income and its value will be assured in that respect.

Under § 362(c)(2), if money is received by a corporation as a contribution to capital, and is not contributed by a shareholder as such, then the basis of any property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution. The excess (if any) of the amount of such contribution over the amount of the reduction shall be applied to the reduction of the basis of any other property held by the taxpayer.

Section 165(a) allows a deduction for any loss sustained during the taxable year and not compensated for by insurance or otherwise. Section 165(b) limits the amount of the deduction for the loss to the adjusted basis of the property, as determined under § 1011. Under § 165(i)(1), a taxpayer may elect to take a loss attributable to a disaster occurring in a Presidentially declared disaster area into account for the taxable year immediately preceding the taxable year in which the disaster occurred. Section 165(i)(3) provides that the amount of the loss taken into account in the preceding taxable year cannot exceed the uncompensated amount determined on the basis of the facts existing at the date the taxpayer claims the loss. Section 1.165–1(d)(2)(iii) provides that if a taxpayer has deducted a loss and in a subsequent taxable year receives reimbursement for such loss, the amount of the reimbursement must be included in gross income for the taxable year in which received, subject to the provisions of § 111, relating to recovery of amounts previously deducted.

Section 1033(a) provides that if property, as a result of its destruction in whole or in part, is involuntarily converted into money, the gain, if any, is recognized except to the extent that the electing taxpayer, within 2 years after the close of the first taxable year in which any gain was realized, purchases other property similar or related in service or use to the property so converted. Section 1400L(g) extends this replacement period from 2 years to 5 years for property compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone (as defined in § 1400L(h)), if substantially all of the use of the replacement property is in New York City. (The New York Liberty Zone is the area in New York City located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway)). Under §1033(a)(2), replacement property is treated as purchased only if, but for the provisions of § 1033(b), its unadjusted basis would be determined under § 1012. In accordance with § 1033(a), the gain is recognized only to the extent that the amount realized upon such conversion exceeds the cost of the replacement property.

Under § 1033(h)(2), if business or investment property is involuntarily converted due to a Presidentially declared disaster as defined in § 1033(h)(3) (generally, a disaster in an area that has been subsequently determined by the President to warrant federal assistance under the Disaster Relief and Emergency Assistance Act), any tangible property held for productive use in a trade or business is treated as property similar or related in service or use to the converted property.

QUESTIONS AND ANSWERS

Q–1. Are grant payments made under the WTC Grant Programs included in a grant recipient's gross income?

A–1. Generally yes. Payments made under the three WTC grant programs (BRGP, SFARG, and JCRP) are included within the broad definition of "gross income" under § 61 and, as explained in the *Q&As* below, generally do not qualify for any exclusion under the law. A limited exception to this general rule applies in the case of certain JCRP grant payments that qualify for exclusion as a contribution to capital under § 118. *See Q&A–5.*

Grant recipients should note that, even if they must include part or all of a grant in gross income, they are, of course, allowed to deduct against the grant proceeds and other gross income all deductible business expenses, net operating losses, and other allowable deductions (for example, depreciation deductions) for that year. Moreover, to the extent that BRGP grant payments compensate the recipient for damaged or destroyed property, the recipient may offset the amount of the grant payment against the recipient's adjusted basis in the damaged or destroyed property, and defer recognition of the resulting gain under § 1033. *See Q&A–6 and Q&A–7.*

Q–2. Why are payments made under the WTC Grant Programs not excluded from a grant recipient's gross income under the general welfare exclusion?

A–2. The grant payments under the WTC Grant Programs do not qualify for the general welfare exclusion because that exclusion generally is limited to individuals who receive governmental payments to help them with their individual needs (*e.g.*, housing, education, and basic sustenance ex-

penses). In addition, grant payments that compensate for lost profits or business income (whether to individuals or to businesses) do not qualify for the general welfare exclusion.

Q–3. Why are grant payments made under the WTC Grant Programs not excluded from a grant recipient's gross income as gifts under § 102?

A–3. The governmental grant payments to businesses under the WTC Grant Programs do not qualify for the gift exclusion under § 102(a) because the intent of the federal, state, and local governments in making these payments proceeds, not from charity or detached and disinterested generosity, but from the government's duty to relieve the hardship resulting from the disaster and the economic benefits it anticipates from a revitalized New York City economy. *See Kroon.* Neither the Acts that appropriated the CDBG funds for the WTC Grant Programs nor the legislative history of those Acts disclose a donative intent. Instead, Congress indicated that the grant funds were for "economic revitalization," to help New York City in its "overall economic recovery," and to assist the "economic recovery" of areas affected by the terrorist attack. *See* § 434 of Pub. L. No. 107–73, H.R. Conf. Rep. No. 272, 107th Cong. 1st Sess. 176 (2001), and H.R. Conf. Rep. No. 350, 107th Cong. 1st Sess. 455 (2001).

Q–4. Why are grant payments made under the WTC Grant Programs not excluded from a grant recipient's gross income as qualified disaster relief payments under § 139?

A–4. The grant payments under the WTC Grant Programs to businesses other than sole proprietors do not qualify for exclusion from gross income under § 139 because that exclusion applies only to individuals. In the case of sole proprietors, the grant payments made under the WTC Grant Programs do not qualify for exclusion under § 139 because the payments are not made for any of the specific purposes described in § 139(b)(1), (2), or (4).

Q–5. Are payments made under the WTC Grant Programs excluded from gross income as contributions to capital under § 118?

A–5. No, in the case of BRGP and SFARG grant payments, but yes in the case of some JCRP payments.

The BRGP grant payments compensate small businesses for certain losses resulting from the September 11, 2001, attacks on the WTC. Accordingly, these payments are more akin to insurance payments received for losses than contributions to capital of a corporation, within the definition of § 118 and the case law.

Businesses must use SFARG grant payments to pay wages of their employees, an ordinary business expense under § 162. Accordingly, such payments are not contributions to the capital of the recipient corporation under § 118 and the case law. The BRGP and SFARG grant payments must be included in gross income under § 61. *See* Q&A–1.

To the extent a corporate recipient of a JCRP grant payment applies for, receives, and utilizes the grant funds to acquire furniture and equipment, the JCRP grant payment will be a nonshareholder contribution to capital under § 118 and the case law. Pursuant to § 362(c), the basis of furniture and equipment acquired will be reduced by the amount of the JCRP grant received for such purposes.

JCRP grant payments that are made for the other listed purposes of wages, payroll taxes, employee benefits, and rent are not contributions to the capital of a corporation under § 118 and the case law. These payments must be included in gross income under § 61. *See* Q&A–1.

Q–6. Must recipients of grant payments made under the WTC Grant Programs reduce the amount of an allowable casualty loss deduction under § 165 or include in gross income all or part of a casualty loss claimed in a prior year?

A–6. No, in the case of SFARG and JCRP grant payments, but yes in the case of BRGP grant payments.

Section 165 allows deductions for certain losses sustained during the taxable year only if the loss is not compensated by insurance or otherwise. SFARG and JCRP grant payments are not treated as payments in the nature of insurance compensation under § 165 because they are not paid to compensate the business for losses to damaged or destroyed property. Thus, SFARG and JCRP grant payments do not reduce losses on any property destroyed or damaged in the attack on the WTC. SFARG and JCRP grant payments must be included in gross income (*see Q&A–1*) except to the extent that JCRP payments qualify as an excludable contribution to capital under § 118. *See Q&A–5*.

One purpose of the BRGP is to compensate businesses for damage to, or destruction of, real property and other tangible assets, including equipment, furniture and fixtures, supplies, and inventory. Thus, BRGP payments are treated as compensation received for such losses under § 165 to the extent they compensate businesses for their property losses. If a business properly deducted property losses resulting from the WTC attack on a federal income tax return (for example, for 2000 or 2001), and is reimbursed for that loss by a BRGP grant payment in a later year, the business must include the amount of reimbursement in gross income, as ordinary income, on its federal income tax return for that later year to the extent that its income tax liability for the prior year was reduced by reason of the prior year property loss deduction. *See* § 165(i)(1) and § 1.165–1(d)(2)(iii). A business that did not deduct the property loss on a return for a year prior to the year in which it received the grant payment must reduce any allowable deduction for property loss by the amount of the BRGP grant payment to the extent such payment compensates for that property loss. If the amount of compensation exceeds the business' basis in the damaged or destroyed property, the excess (gain) generally must be included in gross income unless the business qualifies to defer recognition of the gain under § 1033. *See Q&A–7.*

Q–7. May a business defer, under § 1033, recognition of gain realized on receipt of a grant payment made under the WTC Grant Programs?

A–7. Yes, in the case of BRGP grant payments (SFARG and JCRP grant payments are not paid to compensate the business for losses to damaged or destroyed property). A business may elect, under § 1033, to defer the gain on BRGP grant payments received to compensate for losses due to damage to, or destruction of, real property and other tangible assets, including equipment, furniture and fixtures, supplies, and inventory used in a trade or business caused by the attack on the WTC.

Businesses using BRGP grant payments for the purpose of repairing or replacing the damaged or destroyed property generally are eligible to defer gain under § 1033, if they make the required election and timely pur-

chase property similar or related in service or use to the converted property, the basis of which would be determined under § 1012 if § 1033(b) did not apply ("qualified replacement property"). Amounts paid by the grant recipients to repair damaged or destroyed property, including amounts paid for debris removal and other clean-up costs, are generally treated as amounts paid to purchase qualified replacement property. In addition, because the property for which businesses will receive the BRGP grant payments was destroyed in a Presidentially declared disaster, the businesses may use the BRGP grant payments to purchase any tangible property of a type held for use in a trade or business and still defer recognition of the gain. *See* § 1033(h)(2). A BRGP grant recipient must replace the damaged or destroyed property within 2 years after the close of the taxable year in which the BRGP grant payment is received (or 5 years if the property was damaged or destroyed due to the September 11, 2001, terrorist attacks in the New York Liberty Zone and substantially all of the use of the replacement property is in New York City), but if necessary may request additional time from its local IRS office. The basis of the new property usually will be the same as the basis of the old property if the entire amount of compensation for the damaged property is used to purchase the replacement property.

The following example illustrates the application of §§ 165 and 1033 to a business receiving a BRGP grant payment.

Example. (i) Business *X* owned tangible personal property with a fair market value of $18,000 and a basis of $10,000 that was destroyed in the attack on the World Trade Center. *X* filed an amended 2000 federal income tax return and properly claimed a casualty loss of $10,000. In 2003, *X* receives a BRGP grant payment of $18,000 as a result of damage to its tangible personal property and uses the entire amount to purchase replacement property for use in its trade or business.

(ii) Pursuant to § 111 and the tax benefit rule, *X* must include in gross income on its 2003 federal income tax return $10,000 of the grant as ordinary income, attributable to the property loss deduction *X* took on its 2000 income tax return. *X* may defer including in income the remaining $8,000 of the grant under § 1033, assuming the requirements of that section are met. *X*'s basis in the replacement property is $10,000 ($18,000 cost of the replacement property minus $8,000 gain deferred under § 1033).

DRAFTING INFORMATION

The principal author of this notice is Shareen S. Pflanz of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Mrs. Shareen Pflanz at 202–622–4920 (not a toll-free call).

Place for Filing Certain Elections, Statements, Returns and Other Documents

Notice 2003–19

SECTION 1. PURPOSE

Certain provisions of Title 26 of the Code of Federal Regulations direct taxpayers to file elections, statements, and other documents with offices or officials that have been eliminated in the recent Internal Revenue Service (Service) reorganization. This notice advises taxpayers of the proper address for filing certain elections, statements, and other documents with the Service as a result of the reorganization, including with respect to offices or officials that no longer exist as part of the reorganization. This notice, however, does not modify any existing delegation order and does not identify Service officials who currently are authorized to perform any action currently provided for in a regulation. Taxpayers should contact the Service if they have questions regarding who within the Service is authorized to perform any action currently provided for in a regulation with respect to a Service official or position that no longer exists as a result of the reorganization.

This notice does not affect any filing prior to its issuance. Furthermore, although this notice does not modify the regulations identified herein, taxpayers should follow the filing instructions contained in the notice in order to ensure the timely receipt and processing of filings made with the Service. However, if a taxpayer files an election, statement, or document as directed in existing regulations, the Service will forward such election, statement, or document to its proper filing location.

The Treasury Department and Service intend to issue revised regulations that will take into account the recent Service reorganization. In addition, until such time, the Service intends to periodically update taxpayers (through updated notices or other means of communication) regarding where elections, statements, and other documents should be filed.

SECTION 2. BACKGROUND

Section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, 112 Stat. 686, requires the Commissioner of Internal Revenue to develop and implement a plan to reorganize the Service. As a result of this reorganization, the Service replaced the national, regional, and district structure with organizational units serving particular industries and groups of taxpayers.

Existing regulations direct taxpayers to file certain elections, statements, and other documents with various national, regional, and district offices, and specify that certain Service officials or positions are authorized to perform certain actions. Some of these regulations pertain to elections, statements, and other documents that, because of a change in the law or other factor, are no longer required to be filed. Other regulations specify outdated places of filing (*e.g.*, the Office of District Director), contain outdated filing instructions, lack specific filing addresses for elections, statements, and other documents that are currently required or permitted to be filed, or specify that certain actions are to be taken by Service officials or positions that no longer exist.

SECTION 3. FORMAT OF THIS NOTICE

This notice lists the affected sections of the regulations, and provides the proper Service office for filing each election, statement, and other document required or permitted by the regulations. Section 4 of this notice is organized according to the Internal Revenue Code section under which the regulations were issued; section 5 provides the mailing addresses for the various Service offices, including the case processing site, listed in the notice; and section 6 provides a telephone number that taxpayers may call to obtain information regarding the location of the nearest Service office.

SECTION 4. REGULATIONS AND
PLACE OF FILING ORGANIZED BY
INTERNAL REVENUE CODE
SECTION

CODE SECTION	REGULATION SECTION AND DESCRIPTION	PLACE OF FILING
Non-Code	50.8 Taxes Imposed on Certain Hydraulic Mining	Cincinnati Submission Processing Center
Non-Code	302.1–3 through 302.1–7 Taxes Under the International Claims Settlement Act	Ogden Submission Processing Center
Non-Code	303.1–4 through 303.1–7 Taxes Under the Trading With the Enemy Act	Ogden Submission Processing Center
43	1.43–3(a)(2) Petroleum Engineer's Certification of a Project	Ogden Submission Processing Center
43	1.43–3(b)(2) Owner's Continued Certification of a Project	Ogden Submission Processing Center
48	1.48–12(d)(7)(ii) Request for Extension of the Period of Limitations	IRS Tax Credit Unit Drop 607 P.O. Box 245 Bensalem, PA 19020
167	1.167(d)–1 Agreement as to Useful Life and Rates of Depreciation	Ogden Submission Processing Center
167	1.167(l)–1(h)(5) Depreciation on Qualified Public Utility Property	Cincinnati Submission Processing Center
169	1.169–4 Election to Revoke Amortization Deduction	Ogden Submission Processing Center
175	1.175–6 Treatment of Expenditures for Soil or Water Conservation	Cincinnati Submission Processing Center
180	1.180–2 Expenditures by Farmers for Fertilizer, etc.	Ogden Submission Processing Center
243	1.243–4 Dividends Received Deduction	Ogden Submission Processing Center
243	1.243–5 Effect of Election	Ogden Submission Processing Center
302	1.302–4 Termination of Shareholder's Interest	*Section 302(c)(2)(A)(iii) agreement*: attach to return *Notice of acquisition*: Cincinnati or Ogden Submission Processing Center
332	1.332–4 Liquidations Covering More Than 1 Year	Ogden Submission Processing Center
341	1.341–7 Certain Sales of Stock of Consenting Corporations	Ogden Submission Processing Center
381	1.381(c)(25)–1 Deficiency Dividend of Qualified Investment Entity	Ogden Submission Processing Center
442	1.442–1(b) Change of Accounting Period	Submission Processing Center where return was filed
443	1.443–1(b)(2)(v) Computation of Tax for Short Period Return	Ogden Submission Processing Center
451	1.451–6(b)(2) Requests for Revocation of Election to Include in Gross Income Insurance Proceeds	Ogden Submission Processing Center
503	1.503(c)–1 Future Status of Organizations Denied Exemption	IRS P.O. Box 192 Covington, KY 41012
507	1.507–2 Termination of Private Foundation Status	IRS P.O. Box 192 Covington, KY 41012
547	1.547–2 Deficiency Dividend	Ogden Submission Processing Center
616	1.616–2 Election to Defer Development Expenditures	Submission Processing Center where return was filed

CODE SECTION	REGULATION SECTION AND DESCRIPTION	PLACE OF FILING
642	1.642(g)–1 Disallowance of Double Deduction	Case Processing Site
754	1.754–1(c)(1) Time and Manner of Making Election to Adjust Basis of Partnership Property	Ogden Submission Processing Center
856	1.856–6 REIT Election to Treat Property as Foreclosure Property	Ogden Submission Processing Center
856	1.856–8 Revocation of REIT Election	Ogden Submission Processing Center
860	1.860–2 Deficiency Dividend Deduction for Qualified Investment Entity	Ogden Submission Processing Center
863	1.863–3(b)(1), (3) and (e)(1) Allocation and Apportionment of Income (election to use books and records method)	Philadelphia Submission Processing Center
863	1.863–3(e)(1) Allocation and Apportionment of Income (method change requests)	Philadelphia Submission Processing Center
936	1.936–7(c) Revocation of Section 936 Election	Philadelphia Submission Processing Center
964	1.964–1(c)(3)(ii) Determination of Earnings and Profits of a Foreign Corporation (method change statements)	Philadelphia Submission Processing Center
970	1.970–2 Election as to Date of Determining Investment in Export Assets	Philadelphia Submission Processing Center
1375	1.1375–1(d)(2) Passive Investment Income of an S Corporation	Ogden Submission Processing Center
1441	1.1441–4(b)(2)(v) Exemption from Withholding on Compensation for Independent (and certain Dependent) Personal Services of a Nonresident Alien (filing by withholding agent)	Internal Revenue Service International Section P.O. Box 920 Bensalem, PA 19020–8518
1502	1.1502–75(h)(1) Consolidated Return Made by Common Parent Corporation	Returns should be filed where the common parent would file a separate return
1563	1.1563–3(d)(2)(iv) Election Designating Group in which the Corporation is to be Included	Ogden Submission Processing Center
2016	20.2016–1 Recovery of Death Taxes Claimed as a Credit	*Taxpayers domiciled in the U.S.:* Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center
2031	20.2031–6 Estate Tax–Valuation of Household & Personal Effects	*Taxpayers domiciled in the U.S.:* Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center
2053	20.2053–3 Estate Tax–Deduction for Expenses of Administering Estate	*Taxpayers domiciled in the U.S.:* Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center
2053	20.2053–9 Estate Tax–Deduction for Certain State Death Taxes	*Taxpayers domiciled in the U.S.:* Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center
2053	20.2053–10 Estate Tax–Deduction for Certain Foreign Death Taxes	*Taxpayers domiciled in the U.S.:* Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center
2056A	20.2056A–2 Requirements for Qualified Domestic Trusts	Case Processing Site

CODE SECTION	REGULATION SECTION AND DESCRIPTION	PLACE OF FILING
2056A	20.2056A–11 Filing Requirements & Payment of IRC § 2056A Estate Tax	*Taxpayers domiciled in the U.S.:* Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center
2701	25.2701–4 Accumulated Qualified Payments	*Taxpayers domiciled in the U.S.:* Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center
6012	1.6012–1(a)(5) Individuals Required to Make Returns of Income	Submission Processing Center where return will be filed
6012	1.6012–2 Corporations Required to Make Returns of Income	Ogden Submission Processing Center or to the address specified in the form or instructions.
6032	1.6032–1 Returns of Banks for Common Trust Funds	Ogden Submission Processing Center
6036	301.6036–1 Notice Required of Executor, Receiver, or Other Fiduciary	Case Processing Site
6039	1.6039–2(b)(2) Time for Furnishing Statements (to Participants in Certain Stock Option Plans) See Code section 6039(a) as to nature of participant statements, as 1.6039–2(b)(2) has not yet been amended to reflect current law.	IRS – Martinsburg Computing Center Information Reporting Program Attn: Extension of Time Coordinator 240 Murall Drive Kearneysville, WV 25430
6043	1.6043–1 Returns Requiring Corporate Dissolution or Liquidation	Ogden Submission Processing Center
6044	1.6044–4 Exemption for Certain Consumer Cooperatives	Ogden Submission Processing Center
6050J	1.6050J–1T Information Returns Relating to Foreclosure of Security	Ogden Submission Processing Center
6091	20.6091–1 Estate Tax–Place of Filing of Returns & Documents	Returns and other forms should be mailed to the address specified in the form or instructions. Other documents should be mailed to: *Taxpayers domiciled in the U.S.*: Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center. Hand-carried returns, forms, or other documents should be filed with the local Service office (see section 6 of this notice).
6091	25.6091–1 Gift Tax–Place for Filing Returns and Other Documents	Returns and other forms should be mailed to the address specified in the form or instructions. Other documents should be mailed to: *Taxpayers domiciled in the U.S.*: Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.*: Philadelphia Submission Processing Center. Hand-carried returns, forms, or other documents should be filed with the local Service office (see section 6 of this notice).

CODE SECTION	REGULATION SECTION AND DESCRIPTION	PLACE OF FILING
6091	31.6091–1 Place for Filing Returns	Returns should be mailed to the address specified in the form or instructions. Hand-carried returns should be filed with the local Service office (see section 6 of this notice).
6091	40.6091–1 Excise Tax–Place for Filing Returns	Returns should be mailed to the address specified in the form or instructions. Hand-carried returns should be filed with the local Service office (see section 6 of this notice).
6091	41.6091–1 Place for Filing Returns	Returns should be mailed to the address specified in the form or instructions. Hand-carried returns should be filed with the local Service office (see section 6 of this notice).
6091	44.6091–1 Place for Filing Returns	Returns should be mailed to the address specified in the form or instructions. Hand-carried returns should be filed with the local Service office (see section 6 of this notice).
6091	55.6091–1 Place for Filing Chapter 44 Tax Returns	Returns should be mailed to the address specified in the form or instructions. Hand-carried returns should be filed with the local Service office (see section 6 of this notice).
6091	156.6091–1 Place for Filing Chapter 54 (Greenmail) Tax Returns	Returns should be mailed to the address specified in the form or instructions. Hand-carried returns should be filed with the local Service office (see section 6 of this notice).
6091	301.6091–1 Place for Filing Returns or Other Documents	Returns and other forms should be mailed to the address specified in the form or instructions. Other documents should be mailed to the Case Processing Site. Hand-carried returns, forms, or other documents should be filed with the local Service office (see section 6 of this notice).
6091	1.6091–2 Place for Filing Income Tax Returns	Returns should be mailed to the address specified in the form or instructions. Hand-carried returns should be filed with the local Service office (see section 6 of this notice).
6104	301.6104(a)–5(a) Withholding of Information from Public Inspection by Applicant for Tax Exempt Status	IRS P.O. Box 192 Covington, KY 41012
6161	1.6161–1 Extension of Time for Paying Tax or Deficiency	Cincinnati or Ogden Submission Processing Center
6161	20.6161–1(b) Extension of Time for Paying Tax Shown on the Return	*Taxpayers domiciled in the U.S.:* Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center.

CODE SECTION	REGULATION SECTION AND DESCRIPTION	PLACE OF FILING
6161	25.6161–1 Gift Tax–Extension of Time for Paying Tax or Deficiency	*Taxpayers domiciled in the U.S.:* Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center.
6161	20.6161–2 Extension of Time for Paying Deficiency in Tax	*Taxpayers domiciled in the U.S.:* Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center
6163	20.6163–1 Estate Tax–Extension of Time for Paying Tax	*Taxpayers domiciled in the U.S.:* Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center.
6164	1.6164–1 Extension of Time for Payment of Taxes by Corporation With Carryback	Cincinnati or Ogden Submission Processing Center
6164	1.6164–8 Corporations–Payments on Termination	Cincinnati or Ogden Submission Processing Center
6165	20.6165–1 Estate Tax–Bonds Where Time to Pay has Been Extended	*Taxpayers domiciled in the U.S.:* Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center.
6166A	20.6166A–1 Estate Tax–Extension of Time to Pay	*Taxpayers domiciled in the U.S.*: Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.*: Philadelphia Submission Processing Center.
6324B	20.6324B–1 Special Lien for Additional Estate Tax Attributable to Farm Value	Case Processing Site
6325	20.6325–1 Estate Tax–Release of Lien or Partial Discharge of Property	*Taxpayers domiciled in the U.S.:* Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center.
6325	301.6325–1 Application for Certificate of Discharge of Property from Lien	Case Processing Site
6326	301.6326–1 Appeal of Erroneous Filing of Lien	Case Processing Site
6334	301.6334–3 Determination of Exempt Amount	Case Processing Site
6334	301.6334–4 Verified Statements	Case Processing Site
6337	301.6337–1 Right to Redeem Property Before or After Sale	Case Processing Site
6343	301.6343–1 Request for Release of Levy	Case Processing Site
6343	301.6343–2 Request for Return of Property Wrongfully Levied Upon	Case Processing Site
6501	301.6501(o)–2 Special Rules for Partnership Items of Federally Registered Partnerships	Cincinnati or Ogden Submission Processing Center
6679	301.6679–1 Failure to File Returns Regarding Foreign Corporations or Partnerships	Philadelphia Submission Processing Center
6724	301.6724–1 Reasonable Cause	Cincinnati or Ogden Submission Processing Center
6863	301.6863–1 Stay of Collection of Jeopardy Assessments	Case Processing Site
6863	301.6863–2 Collection of Jeopardy Assessment, Stay of Sale of Property	Case Processing Site
7001	301.7001–1 License to Collect Foreign Items	Submission Processing Center where return will be filed.
7101	301.7101–1 Form of Bond and Surety Required	Case Processing Site

CODE SECTION	REGULATION SECTION AND DESCRIPTION	PLACE OF FILING
7102	301.7102–1 Single Bond in Lieu of Multiple Bonds	Case Processing Site
7406	301.7406–1 Disposition of Judgments and Moneys Received	Case Processing Site
7425	301.7425–2 Discharge of Liens, Nonjudicial Sales	Case Processing Site
7430	301.7430–1(d)(1)(i) Exhaustion of Administrative Remedies	Case Processing Site
7432	301.7432–1 Civil Damages for Failure to Release Lien	Case Processing Site
7433	301.7433–1 Civil Damages for Unauthorized Collection Actions	Case Processing Site
7507	301.7507–9 Exemption of Insolvent Banks from Tax	Cincinnati or Ogden Submission Processing Center
7517	301.7517–1 Estate and Gift Tax–Determination of Value	*Taxpayers domiciled in the U.S.:* Cincinnati Submission Processing Center *Taxpayers domiciled outside the U.S.:* Philadelphia Submission Processing Center.
7623	301.7623–1 Rewards for Information	Case Processing Site

SECTION 5. MAILING ADDRESSES FOR SERVICE OFFICES LISTED IN THIS NOTICE

Taxpayers required or permitted to file elections, statements, or other documents with the Cincinnati Submission Processing Center should mail the election, statement, or other document to the following address:

Cincinnati Submission Processing Center
Cincinnati, OH 45999

Taxpayers required or permitted to file elections, statements, or other documents with the Ogden Submission Processing Center should mail the election, statement, or other document to the following address:

Ogden Submission Processing Center
P.O. Box 9941
Ogden, UT 84409

Taxpayers required or permitted to file elections, statements, or other documents with the Philadelphia Submission Processing Center should mail the election, statement, or other document to the following address:

Philadelphia Submission Processing Center
P.O. Box 245
Bensalem, PA 19020

Taxpayers required or permitted to file elections, statements, or other documents with a Case Processing Site should mail the election, statement, or other document to the appropriate address indicated in the following chart:

Taxpayers located in:	**Mail Election, Statement, or Other Document to:**
Maine, Massachusetts, New Hampshire, Vermont, Connecticut, Rhode Island	Internal Revenue Service Case Processing, Stop 41125 P.O. Box 9112 Boston, MA 02203
New York	Internal Revenue Service Case Processing 10 Metrotech Center 625 Fulton Street Brooklyn, NY 11201
Pennsylvania and New Jersey	Internal Revenue Service Case Processing P.O. Box 12041 600 Arch Street Philadelphia, PA 19106

Taxpayers located in:	Mail Election, Statement, or Other Document to:
Delaware, Maryland, Virginia, North Carolina, South Carolina	Internal Revenue Service Case Processing 31 Hopkins Plaza, Room 1108 Baltimore, MD 21201
Florida	Internal Revenue Service Case Processing, Stop 4900 400 West Bay Street Jacksonville, FL 32202
Michigan, Ohio, Kentucky, West Virginia	Internal Revenue Service Case Processing P.O. Box 330500, Stop 25 Detroit, MI 48232–6500
Illinois, Indiana, Wisconsin	Internal Revenue Service Case Processing, Stop 4040CHI 230 S. Dearborn Street Chicago, IL 60604
Georgia, Alabama, Mississippi, Louisiana, Arkansas, Tennessee	Internal Revenue Service Case Processing, Stop 35 810 Broadway Street Nashville, TN 37203–3876
Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Missouri, Kansas	Internal Revenue Service Case Processing, Stop 4020 316 N. Robert Street St. Paul, MN 55101
Texas and Oklahoma	Internal Revenue Service Case Processing, MS:4023 DAL 1100 Commerce Street Dallas, TX 75242
Montana, Wyoming, Colorado, Utah, Nevada, New Mexico, Arizona	Internal Revenue Service Case Processing, Stop 4800 DEN 600 17th Street Denver, CO 80204
Northern and Central California except for Oxnard, including the following counties: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Nevada, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Placer, Mendocino, Modoc, Napa, Plumas, Sacramento, Shasta, San Francisco, San Joaquin, San Mateo, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehema, Trinity, Yolo, Yuba, Fresno, Inyo, Kern, Kings, Madera, Merced, Mono, Monterey, San Benito, Santa Clara, Stanislaus, Tulare, Tuolumne	Internal Revenue Service Case Processing 1301 Clay Street, Suite 880S Oakland, CA 94612–5210

Taxpayers located in:	Mail Election, Statement, or Other Document to:
Southern California south of Los Angeles, including the following counties: Imperial, Orange, San Diego, San Bernardino, Riverside and the Carson area in Los Angeles	Internal Revenue Service Case Processing 24000 Avila Road M/S 5735 Laguna Niguel, CA 92607
Los Angeles and Oxnard, including the following counties: Los Angeles, San Luis Obispo, Santa Barbara, Ventura	Internal Revenue Service Case Processing, Stop 4002 300 N. Los Angeles Street Los Angeles, CA 90012
Alaska, Hawaii, Idaho, Washington, Oregon	Internal Revenue Service Case Processing, M/S W155 915 2nd Avenue Seattle, WA 98174
SBSE Taxpayers outside of the United States	Internal Revenue Service Case Processing P.O. Box 12041 600 Arch Street Philadelphia, PA 19106
LMSB Taxpayers outside of the United States	Internal Revenue Service Case Processing 31 Hopkins Plaza, Room 1108 Baltimore, MD 21201

SECTION 6. OBTAINING INFORMATION FOR LOCATION OF SERVICE OFFICES WHERE ELECTIONS, STATEMENTS, RETURNS, AND OTHER DOCUMENTS CAN BE FILED BY PERSONAL DELIVERY

Taxpayers required to file elections, statements, returns, and other documents who are permitted to file by personal delivery with a Service office may obtain information regarding the location of the nearest Service office by calling the Service's toll-free number (1–800–829–1040).

SECTION 7. EFFECTIVE DATE

This notice is effective for elections, statements, and other documents filed on or after April 7, 2003.

SECTION 8. DRAFTING INFORMATION

The principal author of this notice is Michael E. Hara of the Office of Associate Chief Counsel (Procedure and Administration).

Part IV. Items of General Interest

Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries — Suspensions, Censures, Disbarments, and Resignations

Announcement 2003–15

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility will announce in the Internal Revenue Bulletin their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been placed under suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Cramer, George	Chicago, IL	CPA	January 18, 2003 to January 17, 2005

Disbarments From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been disbarred from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Whalley, Christopher J.	Ellsworth, ME	Attorney	July 28, 2002
Chapin, Frank L.	Sandpoint, ID	Enrolled Agent	August 13, 2002
Engstrand Jr., Edward E.	Minneapolis, MN	CPA	November 2, 2002
Fisher, Joanna	Portland, OR	Enrolled Agent	November 15, 2002

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice before

the Internal Revenue Service, may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

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

Name	Address	Designation	Date of Suspension
Kuhajda, Ben	Plainfield, IL	CPA	August 26, 2002 to August 24, 2005
Vaughn, James A.	Albuquerque, NM	CPA	October 1, 2002 to September 29, 2004
McBroom, Byron	Manteca, CA	CPA	October 21, 2002 to October 19, 2006
Jacobs, Robert	Philadelphia, PA	Attorney	October 21, 2002 to April 20, 2006
Kwak, Jong	Beverly Hills, CA	Attorney	October 22, 2002 to October 20, 2003
Smith, Frank L.	Brooksville, FL	Attorney	November 1, 2002 to October 30, 2005
Schwartz, Kenneth J.	Woodland Hills, CA	Attorney	November 1, 2002 to February 27, 2006
Agulnick, Barry W.	New York, NY	Attorney	November 1, 2002 to April 29, 2004
O'Connor, Thomas P.	Palos Park, IL	CPA	November 1, 2002 to October 20, 2003
Brand, Joe A.	Dundee, OH	CPA	November 18, 2002 to November 16, 2004
Battino, Steven	Plainview, NY	CPA	November 25, 2002 to May 23, 2004
Chipman, Ken	Farmington, NM	Enrolled Agent	December 1, 2002 to November 29, 2003

Name	Address	Designation	Date of Suspension
Kirgis, Grant A.	Rochester, MN	CPA	December 1, 2002 to May 30, 2003
Welch, Frank	Stamford, CT	CPA	Indefinite from January 31, 2003
Pickens, Valerie	Seattle, WA	CPA	January 1, 2003 to December 30, 2004
Kidd, Roger F.	Philadelphia, PA	Attorney	January 20, 2003 to April 18, 2003
Sullivan, Raymond	Sonoma, CA	Attorney	March 15, 2003 to November 14, 2003

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

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

Name	Address	Designation	Date of Suspension
Pirro, Anthony G.	South Salem, NY	CPA	Indefinite from June 26, 2002
Scott, Roger	Buffalo, NY	Attorney	Indefinite from August 12, 2002
Patrick, George	Cheshire, CT	CPA	Indefinite from September 9, 2002
Rochon, Jason B.	Lafayette, LA	Attorney	Indefinite from September 9, 2002
Voccola, Edward	Hingham, MA	Attorney	Indefinite from October 18, 2002

Name	Address	Designation	Date of Suspension
Linn, Charles B.	Croton-on-Hudson, NY	Attorney	Indefinite from October 18, 2002
Lum, Eugene K.H.	Long Beach, CA	Attorney	Indefinite from October 18, 2002
Gwilliam, Peter	Lynn, MA	CPA	Indefinite from October 28, 2002
Herlehy, Jon L.	McHenry, IL	CPA	Indefinite from October 28, 2002
Herndon, Henry	Pikeville, NC	CPA	Indefinite from November 1, 2002
McCurry, Todd	Durham, NC	Attorney	Indefinite from November 25, 2002
Adams, James L.	Breckenridge, CO	Attorney	Indefinite from November 25, 2002
Cloer, Stewart	Plano, TX	Attorney	Indefinite from December 13, 2002
Caruso, Robert	Saddle River, NJ	CPA	Indefinite from December 16, 2002
Duru, Ike E.	Atlanta, GA	Attorney	Indefinite from January 10, 2003
Pelletier, Richard A.	Bolton, CT	CPA	Indefinite from January 10, 2003
Austin, Jack	Steamboat Springs, CO	CPA	Indefinite from January 10, 2003
Gibson, Brian M.	Monroe, NY	Attorney	Indefinite from January 10, 2003
Jackson, Robert	Mt. Juliet, TN	Attorney	Indefinite from January 10, 2003

Name	Address	Designation	Date of Suspension
Tenzer, James L.	East Meadow, NY	Attorney	Indefinite from February 4, 2003

Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her resignation as an enrolled agent. The Director, Office of Professional Responsibility, in his discretion, may accept the offered resignation.

The Director, Office of Professional Responsibility, has accepted offers of resignation as an enrolled agent from the following individuals:

Name	Address	Date of Resignation
Korman, Linda	Las Vegas, NV	January 23, 2003

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 Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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