Internal Revenue bulletin

Bulletin No. 2009-34
August 24, 2009

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

Notice 2009–70, page 255.

The Service invites comments on the proper application of the rules relating to the creation and maintenance of multiple layers of forward and reverse section 704(c) gain or loss to partnerships and tiered partnerships, including in the context of partnership mergers and divisions.

Rev. Proc. 2009–34, page 258.

This procedure provides domestic asset/liability percentages and domestic investment yields needed by foreign life insurance companies and foreign property and liability insurance companies to compute their minimum effectively connected net investment income under section 842(b) of the Code for taxable years beginning after December 31, 2007.

EMPLOYEE PLANS

Notice 2009–63, page 252.

Weighted average interest rate update; corporate bond indices; 30–year Treasury securities; segment rates. This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in August 2009; the 24-month average segment rates; the funding transitional segment rates applicable for August 2009; and the minimum present value transitional rates for July 2009.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Part III. Administrative, Procedural, and Miscellaneous

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2009–63

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code as in effect for plan years beginning before 2008. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), the 24-month average segment rates, and the funding transitional segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the minimum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004 and by the Pension Protection Act of 2006 (PPA), provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 through 2007 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004–34, 2004–1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004–34 continues to apply in determining that rate. See Notice 2006–75, 2006–2 C.B. 366.

The composite corporate bond rate for July 2009 is 6.39 percent. Pursuant to Notice 2004–34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

For Plan Years Beginning in		Corporate Bond Weighted	Permissible Range	
Month	*Year*	Average	90% to	100%
August	2009	6.48	5.83	6.48

YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. For plan years beginning in 2008 and 2009, a transitional rule under § 430(h)(2)(G) provides that the segment rates are blended with the corporate bond weighted average as specified above. An election may be made under § 430(h)(2)(G)(iv) to use the segment rates without applying the transitional rule.

Notice 2007–81, 2007–44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, the 24-month average corporate bond segment rates, and the funding transitional segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007–81, the monthly corporate bond yield curve derived from July 2009 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of July 2009 are, respectively, 3.39, 6.28, and 6.47. The three 24-month average corporate bond segment rates applicable for August 2009 under the election of § 430(h)(2)(G)(iv) are as follows:

First Segment	Second Segment	Third Segment
5.12	6.74	6.83

The transitional segment rates under § 430(h)(2)(G) applicable for August 2009, taking into account the corporate bond weighted average of 6.48 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	6.03	6.57	6.60
2009	5.57	6.65	6.71

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 417(e)(3)(A)(ii)(II) (prior to amendment by PPA) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)–1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual rate of interest on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury securities for July 2009 is 4.41 percent. The Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in May 2039.

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in section 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88–73, 1988–2 C.B. 383, provides guidelines for determining the weighted average interest rate. The following rates were determined for plan years beginning in the month shown below.

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range	
Month	*Year*		90% to	105%
August	2009	4.40	3.96	4.62

MINIMUM PRESENT VALUE SEGMENT RATES

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. For plan years beginning in 2008 through 2011, the applicable interest rate is the monthly spot segment rate blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007–81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for July 2009, taking into account the July 2009 30-year Treasury rate of 4.41 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	4.21	4.78	4.82
2009	4.00	5.16	5.23

DRAFTING INFORMATION

The principal author of this notice is Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at *RetirementPlanQuestions@irs.gov*.

Table I

Monthly Yield Curve for July 2009

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	1.79	20.5	6.60	40.5	6.45	60.5	6.41	80.5	6.39
1.0	2.20	21.0	6.59	41.0	6.45	61.0	6.41	81.0	6.39
1.5	2.59	21.5	6.58	41.5	6.45	61.5	6.41	81.5	6.39
2.0	2.97	22.0	6.57	42.0	6.45	62.0	6.41	82.0	6.39
2.5	3.31	22.5	6.56	42.5	6.45	62.5	6.41	82.5	6.39
3.0	3.64	23.0	6.56	43.0	6.44	63.0	6.41	83.0	6.39
3.5	3.94	23.5	6.55	43.5	6.44	63.5	6.41	83.5	6.39
4.0	4.22	24.0	6.54	44.0	6.44	64.0	6.41	84.0	6.39
4.5	4.48	24.5	6.54	44.5	6.44	64.5	6.41	84.5	6.39
5.0	4.72	25.0	6.53	45.0	6.44	65.0	6.41	85.0	6.39
5.5	4.95	25.5	6.52	45.5	6.44	65.5	6.41	85.5	6.39
6.0	5.15	26.0	6.52	46.0	6.44	66.0	6.41	86.0	6.39
6.5	5.34	26.5	6.51	46.5	6.44	66.5	6.41	86.5	6.39
7.0	5.51	27.0	6.51	47.0	6.44	67.0	6.41	87.0	6.39
7.5	5.67	27.5	6.51	47.5	6.43	67.5	6.41	87.5	6.39
8.0	5.81	28.0	6.50	48.0	6.43	68.0	6.41	88.0	6.39
8.5	5.94	28.5	6.50	48.5	6.43	68.5	6.40	88.5	6.39
9.0	6.06	29.0	6.50	49.0	6.43	69.0	6.40	89.0	6.39
9.5	6.16	29.5	6.49	49.5	6.43	69.5	6.40	89.5	6.39
10.0	6.25	30.0	6.49	50.0	6.43	70.0	6.40	90.0	6.39
10.5	6.33	30.5	6.49	50.5	6.43	70.5	6.40	90.5	6.39
11.0	6.40	31.0	6.49	51.0	6.43	71.0	6.40	91.0	6.39
11.5	6.45	31.5	6.48	51.5	6.43	71.5	6.40	91.5	6.39
12.0	6.50	32.0	6.48	52.0	6.43	72.0	6.40	92.0	6.39
12.5	6.54	32.5	6.48	52.5	6.43	72.5	6.40	92.5	6.39
13.0	6.58	33.0	6.48	53.0	6.42	73.0	6.40	93.0	6.39
13.5	6.60	33.5	6.47	53.5	6.42	73.5	6.40	93.5	6.39
14.0	6.62	34.0	6.47	54.0	6.42	74.0	6.40	94.0	6.39
14.5	6.63	34.5	6.47	54.5	6.42	74.5	6.40	94.5	6.39
15.0	6.64	35.0	6.47	55.0	6.42	75.0	6.40	95.0	6.39
15.5	6.65	35.5	6.47	55.5	6.42	75.5	6.40	95.5	6.39
16.0	6.65	36.0	6.47	56.0	6.42	76.0	6.40	96.0	6.39
16.5	6.65	36.5	6.46	56.5	6.42	76.5	6.40	96.5	6.39
17.0	6.65	37.0	6.46	57.0	6.42	77.0	6.40	97.0	6.38
17.5	6.64	37.5	6.46	57.5	6.42	77.5	6.40	97.5	6.38
18.0	6.64	38.0	6.46	58.0	6.42	78.0	6.40	98.0	6.38
18.5	6.63	38.5	6.46	58.5	6.42	78.5	6.40	98.5	6.38
19.0	6.62	39.0	6.46	59.0	6.42	79.0	6.40	99.0	6.38
19.5	6.61	39.5	6.45	59.5	6.41	79.5	6.40	99.5	6.38
20.0	6.61	40.0	6.45	60.0	6.41	80.0	6.39	100.0	6.38

Section 704(c) Layers Relating to Partnership Mergers, Divisions and Tiered Partnerships

Notice 2009–70

Section 1. PURPOSE

The Internal Revenue Service invites public comments on the proper application of the rules relating to the creation and maintenance of multiple layers of forward and reverse section 704(c) gain and loss to partnerships and tiered partnerships, including in the context of partnership mergers and divisions.

Section 2. BACKGROUND

As discussed in greater detail below, the IRS and Treasury Department issued proposed regulations in 2007 addressing the consequences under sections 704(c)(1)(B) and 737 of certain partnership mergers. The IRS and the Treasury Department received a number of comments in response to these proposed regulations expressing concern about the proposed treatment of section 704(c) layers in connection with a partnership merger. In addition, the IRS and the Treasury Department have become aware that practitioners are taking positions based upon different interpretations of the current tiered partnership rules (Treas. Reg. § 1.704–3(a)(9)). A number of practitioners suggest that the tiered partnerships rules may need to be clarified and similar rules be provided with respect to partnership mergers. The IRS and Treasury believe that further study of certain aspects of the application of section 704(c) is necessary before finalizing the Proposed Merger Regulations.

Section 704(c), in relevant part, provides:

(c) CONTRIBUTED PROPERTY.—

(1) IN GENERAL.—Under regulations prescribed by the Secretary—

(A) income, gain, loss, and deduction with respect to property contributed to the partnership by a partner shall be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution,

(B) if any property so contributed is distributed (directly or indirectly) by the partnership (other than to the contributing partner) within 7 years of being contributed—

(i) the contributing partner shall be treated as recognizing gain or loss (as the case may be) from the sale of such property in an amount equal to the gain or loss which would have been allocated to such partner under subparagraph (A) by reason of the variation described in subparagraph (A) if the property had been sold at its fair market value at the time of distribution.

Section 704(c)(1)(A) was enacted as part of the Tax Reform Act of 1984 (P.L. 98–369). Congress determined that "special rules are needed to prevent an artificial shifting of tax consequences between the partners with respect to pre-contribution gain or loss. This is particularly important since the various partners may have different tax positions." H.R. Rep. No. 432, Pt. 2, 98th Cong., 2d Sess., 1209 March 5, 1984. *See* also, Staff of Joint Committee on Taxation, 98th Cong., 2d Sess., General Explanation of H.R. 4170, 212, Dec. 31, 1984.

Section 704(c)(1)(B) was enacted as part of the Omnibus Budget Reconciliation Act of 1989 (P.L. 101–239). It was Congress's view that the prior law made it "possible for partners to circumvent the rule requiring pre-contribution gain on contributed property to be allocated to the contributing partner." S. Finance Comm. 101st Cong., Revenue Reconciliation Act of 1989, Explanation of Provisions Approved by the Committee on Oct. 3, 1989, 196 (Comm. Print 1989).

While section 704(c)(1)(B) addresses the recognition of gain by the contributing partner if property contributed by the partner is distributed to another partner, section 737 addresses the tax consequences when a partner who contributed built-in gain or loss property receives a distribution of other property.

Sections 737(a) and (b), in relevant part, provide:

(a) GENERAL RULE. In the case of any distribution by a partnership to a partner, such partner shall be treated as recognizing gain in an amount equal to the lesser of—

(1) the excess (if any) of

(A) the fair market value of property (other than money) received in the distribution over

(B) the adjusted basis of such partner's interest in the partnership immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution, or

(2) the net precontribution gain of the partner.

Gain recognized under the preceding sentence shall be in addition to any gain recognized under section 731. The character of such gain shall be determined by reference to the proportionate character of the net precontribution gain.

(b) NET PRECONTRIBUTION GAIN. For purposes of this section, the term "net precontribution gain" means the net gain (if any) which would have been recognized by the distributee partner under section 704(c)(1)(B) if all property which—

(1) had been contributed to the partnership by the distributee partner within 7 years of the distribution, and

(2) is held by such partnership immediately before the distribution, had been distributed by such partnership to another partner.

Sections 737(a) and (b) were enacted as part of the Energy Policy Act of 1992 (P.L. 102–486) as a result of Congress's concern that "a partner who contributes appreciated property to a partnership may be able to avoid or defer the recognition of gain with respect to that property through the mechanism of having the partnership distribute other partnership property to him in partial or complete redemption of his interest while the partnership continues to own the contributed property." H.R. Rep. 102–631, 102nd Cong., 2d. Sess., 68 (June 30, 1992). *See* also, S. Finance Comm. Technical Explanation, 138 Cong. Record S11246, S11265, Aug. 3, 1992 (Daily Ed.). Final regulations under sections 704(c)(1)(B) and 737 were issued in T.D. 8642, dated December 22, 1995. Amendments to these provisions were included in T.D. 8717, dated May 8, 1997, T.D. 9193, dated March 21, 2005 and T.D. 9207, dated May 23, 2005.

On August 22, 2007, the IRS and the Treasury Department published in the **Federal Register** (72 FR 46932) a notice of proposed rulemaking (REG–143397–05) (the Proposed

Merger Regulations), consistent with Notice 2005–15, 2005–1 C.B. 527, providing that (1) section 704(c)(1)(B) applies to newly created section 704(c) gain or loss in property contributed by the transferor partnership to the continuing partnership in an assets-over merger, but does not apply to newly created reverse section 704(c) gain or loss resulting from a revaluation of property in the continuing partnership, and (2) for purposes of section 737(b), net precontribution gain includes newly created section 704(c) gain or loss in property contributed by the transferor partnership to the continuing partnership in an assets-over merger, but does not include newly created reverse section 704(c) gain or loss resulting from a revaluation of property in the continuing partnership. On November 6, 2007, corrections to the proposed regulations were published in the **Federal Register** (72 FR 62608).

The proposed regulations include several examples. *Example (3)* of the proposed regulations (see Treas. Proposed Reg. § 1.704–4(c)(4)(ii)(F), *Example (3)*) involves a situation where built-in gain property contributed to the transferor partnership has both a revaluation loss in the transferor partnership and additional gain upon merger with the transferee partnership. The example concludes that the section 704(c) layers are collapsed in the merger and that upon contribution to the transferee partnership the property had only built-in gain and no built-in loss.

Example 3 is as follows.

Example (3). Revaluation loss and merger gain. (i) Facts. On January 1, 2005, A contributes Asset 1, with a basis of $200x and a fair market value of $300x, to partnership PRS1 in exchange for a 50 percent interest. On the same date, B contributes $300x of cash to PRS1 in exchange for a 50 percent interest. Also on January 1, 2005, C contributes Asset 2, with a basis of $100x and a fair market value of $200x, to partnership PRS2 in exchange for a 50 percent interest. On the same date, D contributes $200x of cash to PRS2 in exchange for a 50 percent interest. PRS1 and PRS2 both have provisions in their respective partnership agreements requiring the revaluation of partnership property upon entry of a new partner. PRS2 would not be treated as an investment company (within the meaning of section 351) if it were incorporated. Neither partnership holds any unrealized receivables or inventory for purposes of section 751. In addition, neither partnership has a section 754 election in place. Asset 1 and Asset 2 are nondepreciable capital assets.

Later on in 2005, PRS2 admitted E as a new partner in PRS2 at a time when the fair market value of Asset 2 was $150x and PRS2's only other asset was cash of $200x. In exchange for a contribution of cash of $175x, E was admitted as a one-third partner in PRS2. In accordance with the terms of PRS2's partnership agreement, the partnership revalued its assets upon admission of E so that the unrealized loss of $50x attributable to Asset 2 was allocated equally between C and D, or $25x each. On January 1, 2008, PRS 2 merges into PRS1. At the time of the merger, PRS1's only assets are Asset 1, with a fair market value of $900x, and $300x in cash. PRS2's only assets are Asset 2, with a fair market value of $600x, and $375x in cash. After the merger, the partners have book capital and profits and loss interests in PRS1 as follows: A, 27.5%; B, 27.5%; C, 15%; D, 15%; and E, 15%. On January 1, 2013, Asset 2 is distributed to A when its value is still $600.

(ii) *Analysis*. On the date of the merger of PRS2 into PRS1, the fair market value of Asset 2 ($600x) exceeded its adjusted tax basis ($100x). Thus, when Asset 2 was contributed to PRS1 in the merger, it was section 704(c) gain property. The total amount of the section 704(c) gain was $500x ($600x (fair market value) - 100x (adjusted basis)). The amount of the original section 704(c) gain attributable to Asset 2 equals $50x, the difference between its fair market value ($200x) and adjusted tax basis ($100x) upon contribution to PRS2 by C, less the unrealized loss ($50x) attributable to the revaluation of PRS2 on the admission of E as a partner in PRS2. The amount of the new section 704(c) gain attributable to Asset 2 equals $450x, the total section 704(c) gain ($500x) less the amount of the original section 704(c) gain ($50x). The distribution of Asset 2 to A occurs more than seven years after the contribution by C to PRS2. Therefore, pursuant to § 1.704–4(c)(4)(ii)(A), section 704(c)(1)(B) does not apply to the original section 704(c) gain. The distribution of Asset 2 to A, however, occurs within seven years of the contribution of Asset 2 to PRS1 and PRS2. Pursuant to § 1.704–4(c)(4)(ii)(B), section 704(c)(1)(B) applies to the new section 704(c) gain. As the transferees of PRS2's partnership interest in PRS1, C, D and E each succeed to $150 of new section 704(c) gain. Thus, as a result of the distribution of Asset 2 to A within seven years of the merger, C, D and E are each required to recognize $150 of gain.

A number of rules in existing regulations may be relevant to mergers, divisions and tiered partnerships. In particular Treas. Reg. § 1.704–3(a)(7)-(9) may apply.

Treas. Reg. § 1.704–3(a)(7) provides rules when a partner transfers his partnership interest and provides a "step in the shoes" approach:

> (7) *Transfer of a partnership interest*.—If a contributing partner transfers a partnership interest, built-in gain or loss must be allocated to the transferee partner as it would have been allocated to the transferor partner. If the contributing partner transfers a portion of the partnership interest, the share of built-in gain or loss proportionate to the interest transferred must be allocated to the transferee partner. This rule does not apply to any person who acquired a partnership interest from a § 1.752–7 liability partner in a transaction in which paragraph (e)(1) of § 1.752–7 applies. See § 1.752–7(c)(1).

Treas. Reg. § 1.704–3(a)(8) provides special rules for certain specific situations, including the disposition of section 704(c) property in a nonrecognition transaction. Treas. Reg. § 1.704–3(a)(8)(i) states, in relevant part:

> (8) *Special rules*.—(i) *Disposition in a nonrecognition transaction*.—If a partnership disposes of section 704(c) property in a nonrecognition transaction, the substituted basis property (within the meaning of section 7701(a)(42)) is treated as section 704(c) property with the same amount of built-in gain or loss as the section 704(c) property disposed of by the partnership. If gain or loss is recognized in such a transaction, appropriate adjustments must be made. The allocation method for the substituted basis property must be consistent with the allocation method chosen for the original property.

Guidance on allocations with regard to the contribution of section 704(c) property in a tiered partnership structure is provided in Treas. Reg. § 1.704–3(a)(9):

> (9) *Tiered partnerships*.—If a partnership contributes section 704(c) property to a second partnership (the lower-tier partnership), or if a partner that has contributed section 704(c) property to a partnership contributes that partnership interest to a second partnership (the upper-tier partnership), the upper-tier partnership must allocate its distributive share of lower-tier partnership items with respect to that section 704(c) property in a manner that takes into account the contributing partner's remaining built-in gain or loss. Allocations made under this paragraph will be considered to be made in a manner that meets the requirements of § 1.704–1(b)(2)(iv)(*q*) (relating to capital account adjustments where guidance is lacking).

Section 3. DISCUSSION

While no requests for a hearing were received in response to the proposed regulations issued on August 22, 2007, the IRS and the Treasury Department did receive comments relating to the proposed regulations and took notice of a number of articles published in response to the proposed regulations.

Most of the comments and articles address *Example (3)* which provides that property either has a built-in gain or built-in loss upon merger, not both, and that original section 704(c) gain is reduced by subsequent revaluation losses. Several comments discussed not only the specifics of *Example (3)*, but also the broader implications of the example. In particular, the commentators questioned whether the example implies that a subsequent revaluation loss would reduce prior section 704(c) gains rather than create a new section 704(c) loss layer where there has been no partnership merger. Another comment suggested that the section 704(c) allocations in the example could be different if, for example, the transferor partnership used the remedial method instead of the traditional method. Other commentators expressed concerns that the application of the proposed regulations would result in tax allocations after the merger that are not consistent with the economic arrangement of the partners of the transferor partnership. For example, if layers of reverse section 704(c) built-in gain or built-in loss are collapsed in the merger, then a partner who prior to the merger was allocated a net loss for book purposes with respect to the property would not recognize a corresponding tax loss until liquidation of its interest. They contend that if the transferor partnership had continued in existence instead of liquidating, the section 704(c) layers would have been preserved under the tiered partnership rules of Treas. Reg. § 1.704–3(a)(9). Some practitioners believe the results should be the same in a merger.

The IRS and the Treasury Department have also become aware that there are conflicting views among practitioners about how section 704(c) layers should be maintained with respect to tiered partnerships. One view is that an aggregate approach should apply or be permitted such that a tiered partnership arrangement can be "looked through" and section 704(c) applied as if the partners of the upper-tier partnership directly own a portion of the assets of the lower-tier partnership (the Aggregate Approach). Another view is the entity approach under which the upper-tier partnership is treated as owning an interest in the lower-tier partnership but is not treated as owning any interest in the section 704(c) property of the lower-tier partnership (the Entity Approach). Each approach raises different issues and has unique consequences.

After extensive consideration of the concerns raised, the IRS and the Treasury Department believe that comments would be helpful to the development of guidance concerning section 704(c) layers in tiered partnerships and in mergers and divisions. The IRS and Treasury Department believe that it is appropriate to consider the issues regarding section 704(c) layers in general before finalizing the Proposed Merger Regulations.

Section 4. REQUEST FOR COMMENTS

The IRS and Treasury Department are seeking comments relating to section 704(c) layers, as well as other section 704(c) issues, with respect to tiered partnerships, mergers and divisions. The IRS and the Treasury Department plan to address these issues as part of a future guidance project. However, the IRS and Treasury Department are not requesting comments on the principles described in Notice 2005–15, 2005–1 C.B. 527.

The IRS and Treasury Department include examples below of the types of comments requested, but comments are requested on all aspect of these issues, not only those matters listed.

Single Partnership with Layers — No Tiers

1. Should any changes be made to the events in Treas. Reg. § 1.704–1(b)(2)(iv)(f), the occurrence of which allow for a revaluation of assets? Should additional events be added?

2. After revaluing property, when, if at all, is it appropriate for taxpayers to net additional differences between value and basis against existing section 704(c) layers and when is it appropriate to create new section 704(c) layers if the layers offset one another (*e.g.*, loss and gain layers)?

3. If a partnership has multiple section 704(c) layers, how should tax depreciation, depletion, amortization and gain or loss be allocated between the layers? When is it appropriate for partnerships to allocate these items to the latest layers first, to earlier layers first or to allocate these items *pro rata* to all layers for this purpose? Are other methods appropriate? How are these amounts allocated between layers if there are offsetting layers (*e.g.*, how should depreciation be allocated between layers if a property has both a $100 gain layer and a subsequent $100 loss layer)?

4. What other section 704(c) issues are raised relating to section 704(c) layers, *e.g.*, when partnership property is revalued?

Tiers of Partnerships with Layers

5. Are changes necessary to Treas. Reg. § 1.704–3(a)(7) and (8) to address compliance with section 704(c) and maintenance of section 704(c) layers when property is either contributed to a partnership or transferred to a partner in a tiered partnership structure?

6. Are there different considerations in making property revaluation decisions in tiered partnership structures than in a single partnership (*e.g.*, should a revaluation of an upper-tier partnership constitute a revaluation event at the lower-tier partnership and should revaluation be dependent upon whether the upper-tier partnership has a significant interest in the lower-tier partnership)? Does the order in which tiered partnerships make property revaluations affect resulting section 704(c) layers and does existing guidance permit taxpayers to make revaluations in the appropriate order as necessary?

7. What issues relating to section 704(c) must taxpayers address in tiered partnership structures? What additional issues should be addressed by the regulations, including Treas. Reg. § 1.704–3(a)(9)?

8. When should Treas. Reg. § 1.704–3(a)(9) permit taxpayers to use an Aggregate Approach or Entity Approach? What should be the results under these approaches? Should taxpayers be able to use other methods to track section 704(c) layers?

9. Under the Aggregate Approach, how would the section 704(c) layers be maintained by the lower-tier partnership?

10. Is the information necessary to maintain section 704(c) layers under the Aggregate Approach readily available? If

the Aggregate Approach is permitted what, if any, additional rules would be necessary so that the partnerships may secure the required information?

11. Under the Entity Approach, if after allocating the upper-tier partnership's distributive share of lower-tier partnership section 704(c) allocations on the sale of an asset at the lower-tier level there are remaining book tax differences in the upper tier partnership, how, if at all, should these differences be resolved at the upper tier level?

Mergers

12. Recognizing that the transferor partnership terminates in a merger, what different issues do mergers raise for the section 704(c) layer rules ?

13. Whether the Aggregate or Entity Approach is used in tiered partnerships, how will the approach be affected by a merger of one of the partnerships in a tiered arrangement, including a partnership that directly holds section 704(c) property and a partnership with an indirect interest in the property?

14. Under the Aggregate Approach, how would the transferee partnership maintain the section 704(c) layers of the transferor partnership?

15. Under the Entity Approach, when should the transferee partnership maintain the layers of the transferor partnership, or should each asset have a single section 704(c) layer as a result of the merger?

16. Are there different considerations if the transferor has partnerships as partners or if the transferee partnership is a partner in another partnership?

Divisions

17. What issues regarding section 704(c) layers are raised in a division of a "traditional" single tier partnership and in the division of a partnership that is part of a tiered partnership structure?

18. Assuming a partnership division should not create new section 704(c) property (or section 737 net precontribution gain) when each partner's overall interest in each partnership property does not change, how should section 704(c) layers be created and maintained when a division is not *pro rata* or other changes in partners or property interests occur at the time of the division?

International Issues

19. What international tax issues are raised on the application of section 704(c) layers to tiered partnerships, mergers and divisions? For example, how should section 704(c) layers be created and maintained in cross-border tiered partnerships and mergers and divisions? Should similar "layers" be created and maintained to track and preserve the character of the gain under international tax provisions, including sections 367, 897, and 1248?

Comments may be submitted on or before February 22, 2010 to Internal Revenue Service, PO Box 7604, Washington, DC 20044, Attn: CC:PA:LPD:PR (Notice 2009–70), Room 5203. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to the Courier's Desk at 1111 Constitution Avenue, NW, Washington DC 20224, Attn: CC:PA:LPD:PR (Notice 2009–70), Room 5203. Submissions may also be sent electronically via the internet to the following email address: *Notice.comments@irscounsel.treas.gov*. Include the notice number (Notice 2009–70) in the subject line.

Section 5. DRAFTING INFORMATION

The principal author of this notice is Laura Fields of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Ms. Fields at (202) 622–3050 (not a toll-free call).

---

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of tax liability.

Rev. Proc. 2009–34

SECTION 1. PURPOSE

This revenue procedure provides the domestic asset/liability percentages and domestic investment yields needed by foreign life insurance companies and foreign property and liability insurance companies to compute their minimum effectively connected net investment income under section 842(b) of the Internal Revenue Code for taxable years beginning after December 31, 2007. Instructions are provided for computing foreign insurance companies' liabilities for the estimated tax and installment payments of estimated tax for taxable years beginning after December 31, 2007. For more specific guidance regarding the computation of the amount of net investment income to be included by a foreign insurance company on its U.S. income tax return, see Notice 89–96, 1989–2 C.B. 417. For the domestic asset/liability percentage and domestic investment yield, as well as instructions for computing foreign insurance companies' liabilities for estimated tax and installment payments of estimated tax for taxable years beginning after December 31, 2006, see Rev. Proc. 2008–53, 2008–36 I.R.B. 678.

SECTION 2. CHANGES

DOMESTIC ASSET/LIABILITY PERCENTAGES FOR 2008. The Secretary determines the domestic asset/liability percentage separately for life insurance companies and property and liability insurance companies. For the first taxable year beginning after December 31, 2007, the relevant domestic asset/liability percentages are:

118.6 percent for foreign life insurance companies, and

183.4 percent for foreign property and liability insurance companies.

.02 DOMESTIC INVESTMENT YIELDS FOR 2008. The Secretary is required to prescribe separate domestic investment yields for foreign life insurance companies and for foreign property and liability insurance companies. For the first taxable year beginning after December 31, 2007, the relevant domestic investment yields are:

5.3 percent for foreign life insurance companies, and

3.6 percent for foreign property and liability insurance companies.

.03 SOURCE OF DATA FOR 2008. The section 842(b) percentages to be used for the 2008 tax year are based on tax return data following the same methodology used for the 2007 year.

SECTION 3. APPLICATION—ESTIMATED TAXES

To compute estimated tax and the installment payments of estimated tax due for taxable years beginning after December 31, 2007, a foreign insurance company must compute its estimated tax payments by adding to its income other than net investment income the greater of (i) its net investment income as determined under section 842(b)(5), that is actually effectively connected with the conduct of a trade or business within the United States for the relevant period, or (ii) the minimum effectively connected net investment income under section 842(b) that would result from using the most recently available domestic asset/liability percentage and domestic investment yield. Thus, for installment payments due after the publication of this revenue procedure, the domestic asset/liability percentages and the domestic investment yields provided in this revenue procedure must be used to compute the minimum effectively connected net investment income. However, if the due date of an installment is less than 20 days after the date this revenue procedure is published in the Internal Revenue Bulletin, the asset/liability percentages and domestic investment yields provided in Rev. Proc. 2008–53 may be used to compute the minimum effectively connected net investment income for such installment. For further guidance in computing estimated tax, see Notice 89–96.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective for taxable years beginning after December 31, 2007.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Sheila Ramaswamy of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Sheila Ramaswamy at (202) 622–3870 (not a toll-free call).

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

Bulletins 2009–27 through 2009–34

Announcements:

Notices:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

Treasury Decisions:

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

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

Bulletins 2009–27 through 2009–34

Announcements:

2006-93
Superseded by
Ann. 2009-62, 2009-33 I.R.B. *247*

Notices:

2004-67
Supplemented and superseded by
Notice 2009-59, 2009-31 I.R.B. *170*

2006-70
Obsoleted by
T.D. 9453, 2009-28 I.R.B. *114*

2006-109
Superseded in part by
Rev. Proc. 2009-32, 2009-28 I.R.B. *142*

2008-43
Obsoleted by
REG-113289-08, 2009-33 I.R.B. *244*

Revenue Procedures:

97-49
Modified and superseded by
Rev. Proc. 2009-31, 2009-27 I.R.B. *107*

2008-38
Superseded by
Rev. Proc. 2009-30, 2009-27 I.R.B. *27*

2008-65
Modified by
Rev. Proc. 2009-33, 2009-29 I.R.B. *150*

2009-16
Modified by
Rev. Proc. 2009-33, 2009-29 I.R.B. *150*

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

U.S. GOVERNMENT PRINTING OFFICE
KEEPING AMERICA INFORMED

Order Processing Code:
3465

Easy Secure Internet:
bookstore.gpo.gov

Internal Revenue Cumulative Bulletins Publications and Subscription Order Form

Toll Free: 866 512-1800
DC Area: 202 512-2800
Fax: 202 512-2250

Mail: Superintendent of Documents
P.O. Box 371954
Pittsburgh, PA 15250-7954

Publications

Qty.	Stock Number	Title	Price Each	Total Price
	048–004–02467–5	Cum. Bulletin 1999–3	20.40	
	048–004–02462–4	Cum. Bulletin 2001–2 (Jul-Dec)	24.00	
	048–004–02480–2	Cum. Bulletin 2001–3	71.00	
	048–004–02470–5	Cum. Bulletin 2002–2 (Jul-Dec)	28.80	
	048–004–02486–1	Cum. Bulletin 2002–3	54.00	
	048–004–02483–7	Cum. Bulletin 2004–2 (July–Dec)	54.00	
	048–004–02488–8	Cum. Bulletin 2005–2	56.00	
			Total for Publications	

Subscriptions

Qty.	List ID	Title	Price Each	Total Price
	IRS	Internal Revenue Bulletin	$247	
		Optional – Add $50 to open Deposit Account		
		Total for Subscriptions		
		Total for Publications and Subscriptions		

NOTE: Price includes regular shipping and handling and is subject to change. International customers please add 40 percent.

VISA MasterCard DISCOVER NOVUS AMERICAN EXPRESS

Standing Order Service*

To automatically receive future editions of *Internal Revenue Cumulative Bulletins* without having to initiate a new purchase order, sign below for Standing Order Service.

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

Authorization

I hereby authorize the Superintendent of Documents to charge my account for Standing Order Service:
(enter account information at right)

❑ VISA ❑ MasterCard ❑ Discover/NOVUS ❑ American Express

❑ Superintendent of Documents (SOD) Deposit Account

Authorizing signature (Standing orders not valid unless signed.)

Please print or type your name.

Daytime phone number (_______) ______________________

SuDocs Deposit Account

A Deposit Account will enable you to use Standing Order Service to receive subsequent volumes quickly and automatically. For an initial deposit of $50 you can establish your Superintendent of Documents Deposit Account.

❑ **YES!** Open a SOD Deposit Account for me so I can order future publications quickly and easily.
I am enclosing the $50 initial deposit.

Check method of payment:

❑ Check payable to Superintendent of Documents

❑ SOD Deposit Account

❑ VISA ❑ MasterCard ❑ Discover/Novus ❑ American Express

(expiration date)

Thank you for your Order!

Authorizing signature 06/06

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip Code

E-mail address

Daytime phone including area code

Purchase order number (optional)

*Standing Order Service

Just sign the authorization above to charge selected items to your existing Deposit Account, VISA or MasterCard, Discover/NOVUS, or American Express account. Or open a Deposit Account with an initial deposit of $50 or more. Your account will be charged only as each volume is issued and mailed. Sufficient money must be kept in your account to insure that items are shipped. Service begins with the next issue released of each item you select.

You will receive written acknowledgement for each item you choose to receive by Standing Order Service.

If you wish to cancel your Standing Order Service, please notify the Superintendent of Documents in writing (telephone cancellations are accepted, but must be followed up with a written cancellation within 10 days).

Important: Please include this completed order form with your payment.

INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at www.irs.gov. Select Businesses. Under Businesses Topics, select More Topics. Then select Internal Revenue Bulletins.

INTERNAL REVENUE BULLETINS ON CD-ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD-ROM). The CD-ROM can be purchased from National Technical Information Service (NTIS) on the Internet at www.irs.gov/cdorders (discount for online orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, P.O. Box 371954, Pittsburgh PA, 15250–7954. Please allow two to six weeks, plus mailing time, for delivery.

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the IRS Bulletin Unit, SE:W:CAR:MP:T:T:SP, Washington, DC 20224.

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, $300