Internal Revenue bulletin

Bulletin No. 2011-6
February 7, 2011

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. 2011–4, page 448.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for February 2011.

T.D. 9509, page 450.

Final regulations under section 1301 of the Code provide rules under the American Jobs Creation Act of 2004 relating to the averaging of farm and fishing income.

T.D. 9510, page 453.

Final regulations under section 6012 of the Code allow the IRS to require corporations to file a schedule disclosing uncertain tax positions related to the tax return as required by the IRS.

T.D. 9511, page 455.

Final regulations under sections 6229(c)(2) and 6501(e) of the Code define an omission from gross income for purposes of the six-year minimum period for assessment of tax attributable to partnership items and the six-year period for assessing tax.

REG–149335–08, page 468.

Proposed regulations under sections 263A and 471 of the Code provide rules relating to capitalizing and allocating sales-based royalties, and adjusting the cost of merchandise inventory for sales-based vendor allowances. The regulations modify the simplified production method and the simplified resale method.

EXCISE TAX

Notice 2011–9, page 459.

This notice modifies and supersedes Notice 2010–71, 2010–50 I.R.B. 822, which provides guidance on the annual fee imposed by section 9008 of the Affordable Care Act on certain manufacturers and importers (covered entities) of branded prescription drugs sold to certain government programs. The modifications affect information provided by a covered entity regarding controlled group members, orphan drugs, Medicare Part D rebates, and Medicaid rebates. Notice 2010–71 modified and superseded.

Notice 2011–10, page 463.

This notice provides rules under which taxpayers may make a one-time claim for payment of the credits and payments allowable under sections 6426 and 6427 of the Code for biodiesel (including renewable diesel) mixtures, alternative fuels, and alternative fuel mixtures sold or used during calendar year 2010.

ADMINISTRATIVE

Rev. Proc. 2011–19, page 465.

This procedure sets forth the maximum face amount of Qualified Zone Academy Bonds ("QZABs") that may be issued for each state for the calendar year 2011. For this purpose, "state" includes the District of Columbia and the possessions of the United States.

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 enforce the 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 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 February 2011. See Rev. Rul. 2011-4, page 448.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of February 2011. See Rev. Rul. 2011-4, page 448.

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 February 2011. See Rev. Rul. 2011-4, page 448.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2011. See Rev. Rul. 2011-4, page 448.

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 February 2011. See Rev. Rul. 2011-4, page 448.

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 February 2011. See Rev. Rul. 2011-4, page 448.

Section 471.—General Rule for Inventories

26 CFR 1.471-3: Inventories at cost.

Proposed regulations provide that the amount of a sales-based vendor allowance is a reduction in the cost of merchandise sold and does not reduce the inventory cost or value of goods on hand at the end of the taxable year. See REG-149335-08, page 468.

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 February 2011. See Rev. Rul. 2011-4, page 448.

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 February 2011. See Rev. Rul. 2011-4, page 448.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of February 2011. See Rev. Rul. 2011-4, page 448.

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 February 2011. See Rev. Rul. 2011-4, page 448.

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 February 2011. See Rev. Rul. 2011-4, page 448.

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, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for February 2011.

Rev. Rul. 2011–4

This revenue ruling provides various prescribed rates for federal income tax purposes for February 2011 (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)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an 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. 2011–4 TABLE 1

Applicable Federal Rates (AFR) for February 2011

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term				
AFR	.51%	.51%	.51%	.51%
110% AFR	.56%	.56%	.56%	.56%
120% AFR	.61%	.61%	.61%	.61%
130% AFR	.66%	.66%	.66%	.66%
Mid-term				
AFR	2.33%	2.32%	2.31%	2.31%
110% AFR	2.57%	2.55%	2.54%	2.54%
120% AFR	2.80%	2.78%	2.77%	2.76%
130% AFR	3.04%	3.02%	3.01%	3.00%
150% AFR	3.51%	3.48%	3.46%	3.46%
175% AFR	4.10%	4.06%	4.04%	4.03%
Long-term				
AFR	4.15%	4.11%	4.09%	4.08%
110% AFR	4.57%	4.52%	4.49%	4.48%
120% AFR	4.99%	4.93%	4.90%	4.88%
130% AFR	5.41%	5.34%	5.30%	5.28%

REV. RUL. 2011–4 TABLE 2

Adjusted AFR for February 2011

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	.74%	.74%	.74%	.74%
Mid-term adjusted AFR	2.04%	2.03%	2.02%	2.02%
Long-term adjusted AFR	4.47%	4.42%	4.40%	4.38%

REV. RUL. 2011–4 TABLE 3

Rates Under Section 382 for February 2011

Adjusted federal long-term rate for the current month	4.47%
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.)	4.47%

REV. RUL. 2011–4 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for February 2011

Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.75%
Appropriate percentage for the 30% present value low-income housing credit	3.32%

REV. RUL. 2011–4 TABLE 5	
Rate Under Section 7520 for February 2011	
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	2.8%

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2011. See Rev. Rul. 2011-4, page 448.

Section 1301.—Average of Farm Income

26 CFR 1.1301–1: Averaging of farm and fishing income.

T.D. 9509

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Farmer and Fisherman Income Averaging

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the averaging of farm and fishing income in computing income tax liability. The regulations reflect changes made by the American Jobs Creation Act of 2004 and the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. The regulations provide guidance to individuals engaged in a farming or fishing business who elect to reduce their tax liability by treating all or a portion of the current taxable year's farm or fishing income as if one-third of it had been earned in each of the prior three taxable years.

DATES: *Effective Date:* These regulations are effective on December 15, 2010.

Applicability Date: For date of applicability, see §1.1301–1(g).

FOR FURTHER INFORMATION CONTACT: Erika Reigle, (202) 622–4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 1. On July 22, 2008, temporary regulations (T.D. 9417, 2008–2 C.B. 693) were published in the **Federal Register** (73 FR 42522) relating to the averaging of farm and fishing income in computing tax liability. A notice of proposed rulemaking (REG–161695–04, 2008–37 I.R.B. 699) cross-referencing the temporary regulations also was published in the **Federal Register** (73 FR 42538) on July 22, 2008. No comments in response to the notice of proposed rulemaking or requests to hold a public hearing were received, and no hearing was held. This Treasury decision adopts the proposed regulations with minor changes and removes the temporary regulations.

Section 504 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Div. C of Public Law 110–343 (122 Stat. 3765), enacted on October 3, 2008, provides that a taxpayer may treat qualified settlement income received in connection with the civil action *In re Exxon Valdez*, No. 8–095–CV (HRH) (Consolidated) (D. Alaska), as income from a fishing business eligible for income averaging. Therefore, these final regulations include this qualified settlement income in the definition of income from a fishing business. Qualified settlement income is limited to interest and punitive damages. The extent to which compensatory damages are treated as income from a fishing business is determined under the generally applicable rules of section 1301.

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 Code, the notice of proposed rulemaking preceding these regulations were 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 Erika Reigle of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR 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 1.1301–1 is amended by revising the section heading and paragraphs (a), (b)(1), (b)(3), (c)(1), (d)(3)(ii), (d)(4), (e), (f)(2), (f)(4), and (g) to read as follows:

§1.1301–1 Averaging of farm and fishing income.

(a) *Overview.* An individual engaged in a farming or fishing business may make a farm income averaging election to compute current year (election year) income tax liability under section 1 by averaging, over the prior three-year period (base years), all or a portion of the individual's current year electible farm income as defined in paragraph (e) of this section. Electible farm income includes income from both farming and fishing businesses. An individual who makes a farm income averaging election—

(1) Designates all or a portion of the individual's electible farm income for the election year as elected farm income; and

(2) Determines the election year section 1 tax by calculating the sum of—

(i) The section 1 tax that would be imposed for the election year if taxable income for the year were reduced by elected farm income; plus

(ii) The amount by which the section 1 tax would be increased if taxable income for each base year were increased by one-third of elected farm income.

(b) *Individual engaged in a farming or fishing business*—(1) *In general*—(i) *Farming or fishing business*. "Farming business" has the same meaning as provided in section 263A(e)(4) and the regulations under that section. *Fishing business* means the conduct of commercial fishing as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(4)). Accordingly, a fishing business is fishing in which the fish harvested are intended to or do enter commerce through sale, barter, or trade. *Fishing* means the catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; any activities that reasonably can be expected to result in the catching, taking, or harvesting of fish; or any operations at sea in support of or in preparation for the catching, taking, or harvesting of fish. Fishing does not include any scientific research activity conducted by a scientific research vessel. *Fish* means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, other than marine mammals and birds. *Catching, taking, or harvesting* includes activities that result in the killing of fish or the bringing of live fish on board a vessel.

(ii) *Exxon Valdez settlement payments*. For purposes of this section, a qualified taxpayer who receives qualified settlement income in any taxable year is treated as engaged in a fishing business, and the income is treated as income attributable to a fishing business, for that taxable year. A *qualified taxpayer* is an individual plaintiff in the civil action *In re Exxon Valdez*, No. 89–095–CV (HRH) (Consolidated) (D. Alaska). *Qualified taxpayer* also means any individual who is a beneficiary of the estate of such a plaintiff, was the spouse or immediate relative of that plaintiff, and acquired the right to receive the settlement income from that plaintiff. *Qualified settlement income* means any interest and punitive damage awards that are received in connection with the civil action *In re Exxon Valdez* (whether as lump-sum or periodic payments, whether pre- or post-judgment, and whether related to a settlement or to a judgment) and that are otherwise includible in income.

(iii) *Form of business*. An individual engaged in a farming or fishing business includes a sole proprietor of a farming or fishing business, a partner in a partnership engaged in a farming or fishing business, and a shareholder of an S corporation engaged in a farming or fishing business. Except as provided in paragraph (e)(1)(i) of this section, services performed as an employee are disregarded in determining whether an individual is engaged in a farming or fishing business for purposes of section 1301 of the Internal Revenue Code.

(iv) *Base years*. An individual is not required to have been engaged in a farming or fishing business in any of the base years in order to make a farm income averaging election.

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(3) *Lessors of vessels used in fishing*. A lessor of a vessel is engaged in a fishing business for purposes of section 1301 with respect to payments that are received under the lease and are based on a share of the catch from the lessee's use of the vessel in a fishing business (or a share of the proceeds from the sale of the catch) if this manner of payment is determined under a written lease agreement entered into before the lessee begins any significant fishing activities resulting in the catch. A lessor of a vessel is not engaged in a fishing business for purposes of section 1301 with respect to fixed lease payments or with respect to lease payments based on a share of the lessee's catch (or a share of the proceeds from the sale of the catch) if the share is determined under either an unwritten agreement or a written agreement entered into after the lessee begins significant fishing activities resulting in the catch.

(c) *Making, changing, or revoking an election*—(1) *In general*. A farm income averaging election is made by filing Schedule J, "*Income Averaging for Farmers and Fishermen*," with an individual's Federal income tax return for the election year (including a late or amended return if the period of limitation on filing a claim for credit or refund has not expired).

* * * * *

(d) * * *

(3) * * *

(ii) *Example*. The rules of this paragraph (d)(3) are illustrated by the following example:

Example. (i) T is a fisherman who uses the calendar taxable year. In each of the years 2007, 2008, and 2009, T's taxable income is $20,000, none of which is electible farm income. In 2010, T has taxable income of $30,000 (prior to any farm income averaging election), $10,000 of which is electible farm income. T makes a farm income averaging election with respect to $9,000 of the electible farm income for 2010. Under paragraph (a)(2)(ii) of this section, $3,000 of elected farm income is allocated to each of the base years 2007, 2008, and 2009. Under paragraph (a)(2) of this section, T's 2010 tax liability is the sum of the following amounts:

(A) The section 1 tax on $21,000, which is T's taxable income of $30,000, minus elected farm income of $9,000.

(B) For each of the base years 2007, 2008, and 2009, the amount by which the section 1 tax would be increased if one-third of elected farm income were allocated to each year. The amount for each year is the section 1 tax on $23,000 (T's taxable income of $20,000, plus $3,000, which is one-third of elected farm income for the 2010 election year), minus the section 1 tax on $20,000.

(ii) In 2011, T has taxable income of $50,000, $12,000 of which is electible farm income. T makes a farm income averaging election with respect to all $12,000 of the electible farm income for 2011. Under paragraph (a)(2)(ii) of this section, $4,000 of elected farm income is allocated to each of the base years 2008, 2009, and 2010. Under paragraph (a)(2) of this section, T's 2011 tax liability is the sum of the following amounts:

(A) The section 1 tax on $38,000, which is T's taxable income of $50,000, minus elected farm income of $12,000.

(B) For each of the base years 2008 and 2009, the amount by which section 1 tax would be increased if, after adjustments for previous farm income averaging elections pursuant to paragraph (d)(3)(i) of this section, one-third of 2011 elected farm income were allocated to each year. The amount for each year is the section 1 tax on $27,000 (T's taxable income of $20,000 increased by $3,000 for T's 2010 farm income averaging election and further increased by $4,000, which is one-third of elected farm income for the 2011 election year), minus the section 1 tax on $23,000 (T's taxable income of $20,000 increased by $3,000 for T's 2010 farm income averaging election).

(C) For base year 2010, the amount by which section 1 tax would be increased if, after adjustments for previous farm income averaging elections pursuant to paragraph (d)(3)(i) of this section, one-third of elected farm income were allocated to that year. This amount is the section 1 tax on $25,000 (T's 2010 taxable income of $30,000 reduced by $9,000 for T's 2010 farm income averaging election and increased by $4,000, which is one-third of elected farm income for the 2011 election year), minus the section 1 tax on $21,000 (T's taxable income of $30,000 reduced by $9,000 for T's 2010 farm income averaging election).

(4) *Deposits into Merchant Marine Capital Construction Fund*—(i) *Reductions to taxable income and electible farm income*. Under section 7518(c)(1)(A), certain deposits to a Merchant Marine Capital Construction Fund (CCF) reduce taxable income for purposes of the Internal Revenue Code (the CCF reduction). The amount of the CCF reduction is limited under section 7518(a)(1)(A) to the taxpayer's taxable income (determined without regard to the reduction) attributable to specified maritime operations including operations in fisheries of the United States. The CCF reduction is taken into account in determining the taxable income used in computations under this section. In addition, except to the extent the amount described in section 7518(a)(1)(A) is not attributable to the individual's fishing business, the CCF reduction is treated in computing electible farm income as an item of deduction attributable to the individual's fishing business.

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

Example. (i) T is a fisherman who uses the calendar taxable year. In each of the years 2007, 2008, and 2009, T's taxable income (before taking any CCF reduction into account) is $20,000. For taxable year 2008, all of T's income is described in section 7518(a)(1)(A) and is attributable to T's fishing business. T makes a $5,000 deposit into a CCF for taxable year 2008. In 2010, T has total taxable income of $30,000 (before taking any CCF reduction into account). T's electible farm income for 2010 (before taking the CCF reduction into account) is $10,000, all of which is described in section 7518(a)(1)(A) and is attributable to T's fishing business. For taxable year 2010, T makes a $4,000 deposit into a CCF.

(ii) The amount of the 2010 CCF deposit reduces taxable income. Accordingly, T's taxable income for 2010 is $26,000 ($30,000 - $4,000). In addition, the entire amount of the CCF reduction is treated as an item of deduction attributable to T's fishing business. Accordingly, T's electible farm income for 2010 is $6,000 ($10,000 - $4,000). Similarly, the amount of the 2008 CCF deposit reduces T's taxable income for 2008. Accordingly, T's taxable income for 2008 is $15,000 ($20,000 - $5,000).

(iii) T makes an income averaging election with respect to all $6,000 of the electible farm income for 2010. Under paragraph (a)(2)(ii) of this section, $2,000 of elected farm income is allocated to each of the base years 2007, 2008, and 2009. Under paragraph (a)(2) of this section, T's 2010 tax liability is the sum of the following amounts:

(A) The section 1 tax on $20,000, which is T's taxable income of $26,000 ($30,000 reduced by the $4,000 CCF deposit), minus elected farm income of $6,000.

(B) For each of the base years 2007, 2008, and 2009, the amount by which section 1 tax would be increased if one-third of elected farm income were allocated to each year. The amount for base years 2007 and 2009 is the section 1 tax on $22,000, (T's taxable income of $20,000, plus $2,000, which is one-third of elected farm income for the election year), minus the section 1 tax on $20,000. The amount for base year 2008 is the section 1 tax on $17,000, which is T's taxable income of $15,000 ($20,000 reduced by the $5,000 CCF deposit), plus $2,000 (one-third of elected farm income for the election year), minus the section 1 tax on $15,000.

(e) *Electible farm income*—(1) *Identification of items attributable to a farming or fishing business*—(i) *In general*. Farm and fishing income includes items of income, deduction, gain, and loss attributable to an individual's farming or fishing business. Farm and fishing losses include, to the extent attributable to a farming or fishing business, any net operating loss carryover or carryback or net capital loss carryover to an election year. Income, gain, or loss from the sale of development rights, grazing rights, and other similar rights is not treated as attributable to a farming business. In general, farm and fishing income does not include compensation received as an employee. However, a shareholder of an S corporation engaged in a farming or fishing business may treat compensation received from the corporation as farm or fishing income if the compensation is paid by the corporation in the conduct of the farming or fishing business. If a crewmember on a vessel engaged in commercial fishing (within the meaning of section 3 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1802(4)) is compensated by a share of the boat's catch of fish or a share of the proceeds from the sale of the catch, the crewmember is treated for purposes of section 1301 as engaged in a fishing business and the compensation is treated for such purposes as income from a fishing business.

(ii) *Gain or loss on sale or other disposition of property*—(A) *In general*. Gain or loss from the sale or other disposition of property that was regularly used in the individual's farming or fishing business for a substantial period of time is treated as attributable to a farming or fishing business. For this purpose, the term *property* does not include land, but does include structures affixed to land. Property that has always been used solely in the farming or fishing business by the individual is deemed to meet both the regularly used and substantial period tests. Whether property not used solely in the farming or fishing business was regularly used in the farming or fishing business for a substantial period of time depends on all of the facts and circumstances.

(B) *Cessation of a farming or fishing business*. If gain or loss described in paragraph (e)(1)(ii)(A) of this section is realized after cessation of a farming or fishing business, the gain or loss is treated as attributable to a farming or fishing business only if the property is sold within a reasonable time after cessation of the farming or fishing business. A sale or other disposition within one year of cessation of the farming or fishing business is presumed to be within a reasonable time. Whether a sale or other disposition that occurs more than one year after cessation of the farming or fishing business is within a reasonable time depends on all of the facts and circumstances.

(2) *Determination of amount that may be elected farm income*—(i) *Electible farm income*. (A) The maximum amount of income that an individual may elect to average (electible farm income) is the sum of any farm and fishing income and gains, minus any farm and fishing deductions or losses (including loss carryovers and carrybacks) that are allowed as a deduction in computing the individual's taxable income.

(B) Individuals conducting both a farming business and a fishing business must calculate electible farm income by combining income, gains, deductions, and losses derived from the farming business and the fishing business.

(C) Except as otherwise provided in paragraph (d)(4) of this section, the amount of any CCF reduction is treated as a deduction from income attributable to a fishing business in calculating electible farm income.

(D) Electible farm income may not exceed taxable income, and electible farm income from net capital gain attributable to a farming or fishing business may not exceed total net capital gain. Subject to these limitations, an individual who has both ordinary income and net capital gain from a farming or fishing business may elect to average any combination of the ordinary income and net capital gain.

(ii) *Examples*. The rules of this paragraph (e)(2) are illustrated by the following examples:

Example 1. A has ordinary income from a farming business of $200,000 and deductible expenses from a farming business of $50,000. A's taxable income is $150,000 ($200,000 - $50,000). Under paragraph (e)(2)(i) of this section, A's electible farm income is $150,000, all of which is ordinary income.

Example 2. B has capital gain of $20,000 that is not from a farming or fishing business, capital loss from a farming business of $30,000, and ordinary income from a farming business of $100,000. Under section 1211(b), B's allowable capital loss is limited to $23,000. B's taxable income is $97,000 (($20,000 - $23,000) + $100,000). B has a capital loss carryover from a farming business of $7,000 ($30,000 total loss - $23,000 allowable loss). Under paragraph (e)(2)(i) of this section, B's electible farm income is $77,000 ($100,000 ordinary income from a farming business, minus $23,000 capital loss from a farming business), all of which is ordinary income.

Example 3. C has ordinary income from a fishing business of $200,000 and ordinary loss from a farming business of $60,000. C's taxable income is $140,000 ($200,000 - $60,000). Under paragraph (e)(2)(i)(B) of this section, C must deduct the farm loss from the fishing income in determining C's electible farm income. Therefore, C's electible farm income is $140,000 ($200,000 - $60,000), all of which is ordinary income.

Example 4. D has ordinary income from a farming business of $200,000 and ordinary loss of $50,000 that is not from a farming or fishing business. D's taxable income is $150,000 ($200,000 - $50,000). Under paragraph (e)(2)(i)(D) of this section, electible farm income may not exceed taxable income. Therefore, D's electible farm income is $150,000, all of which is ordinary income.

Example 5. E has capital gain from a farming business of $50,000, capital loss of $40,000 that is not from a farming or fishing business, and ordinary income from a farming business of $60,000. E's taxable income is $70,000 (($50,000 - $40,000) + $60,000). Under paragraph (e)(2)(i)(D) of this section, electible farm income may not exceed taxable income, and electible farm income from net capital gain attributable to a farming or fishing business may not exceed total net capital gain. Therefore, E's electible farm income is $70,000 of which $10,000 is capital gain and $60,000 is ordinary income.

(f) * * *

(2) *Changes in filing status*. An individual is not prohibited from making a farm income averaging election solely because the individual's filing status is not the same in an election year and the base years. For example, an individual who is married and files a joint return in the election year, who filed as single in one or more of the base years, may elect to average farm or fishing income, by using the single filing status to compute the increase in section 1 taxes for the base years in which the individual filed as single.

* * * * *

(4) *Alternative minimum tax*. A farm income averaging election is disregarded in computing the tentative minimum tax and the regular tax under section 55 for the election year or any base year. The election is taken into account, however, in determining the regular tax liability under section 53(c) for the election year.

* * * * *

(g) *Effective/applicability date*. This section applies for taxable years beginning after December 15, 2010. See the provisions of §§1.1301–1 and 1.1301–1T as in effect on December 14, 2010, for rules that apply for taxable years beginning on or before December 15, 2010. In addition, a taxpayer may apply paragraph (b)(1)(ii) of this section in taxable years beginning after December 31, 2003.

§1.1301–1T [Removed]

Par. 3. Section 1.1301–1T is removed.

Linda E. Stiff,
Deputy Commissioner for Services and Enforcement.

Approved December 7, 2010.

Michael Mundaca,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on December 10, 2010, 8:45 a.m., and published in the issue of the Federal Register for December 15, 2010, 75 F.R. 78157)

Section 6012.—Persons Required to Make Returns of Income

26 CFR 1.6012–2: Corporations required to make returns of income.

T.D. 9510

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Requirement of a Statement Disclosing Uncertain Tax Positions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations allowing the IRS to require corporations to file a schedule disclosing uncertain tax positions related to the tax return as required by the IRS.

DATES: *Effective Date:* This regulation is effective on December 15, 2010.

Applicability Date: For dates of applicability, see §1.6012–2 (a)(5).

FOR FURTHER INFORMATION CONTACT: Kathryn Zuba at (202) 622–3400 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 6012 relating to the returns of income corporations are required to file. Section 6011 provides that persons liable for a tax imposed by Title 26 shall make a return when required by regulations prescribed by the Secretary of the Treasury according to the forms and regulations prescribed by the Secretary. Treasury Regulation §1.6011–1 requires every person liable for income tax to make the returns required by regulation. Section 6012 requires corporations subject to an income tax to make a return with respect to that tax. Treasury Regulation §1.6012–2 sets out the corporations that are required to file returns and the form those returns must take.

A proposed regulation under section 6012 (REG–119046–10, 2010–40 I.R.B. 415) was published in the **Federal Register** on September 9, 2010. Requirement of a Statement Disclosing Uncertain Tax Positions, 75 Fed. Reg. 54802 (proposed Sept. 9, 2010). The IRS received one written comment concerning the proposed regulation, and a public hearing regarding the proposed regulation was held on October 19, 2010. Neither of the two speakers at the public hearing had comments relating to the proposed regulation, although both organizations the speakers represented had previously submitted written comments concerning the draft Schedule UTP and instructions. Announcement 2010–30, 2010–19 I.R.B. 668. After considering the comments, the proposed regulation is adopted by this Treasury decision with one non-substantive change related to the effective date. While the proposed regulation applied to returns filed for tax years beginning after December 15, 2009 and ending after the date the regulations were published in the **Federal Register**, the final regulation applies to returns filed for tax years beginning on or after January 1, 2010.

Explanation and Summary of Comments

This rule will authorize the IRS to require certain corporations, as set out in forms, publications, instructions, or other guidance, to provide information concerning uncertain tax positions concurrent with the filing of a return. On September 24, 2010, the IRS released Schedule UTP with accompanying instructions that explain how the IRS plans to implement the authority provided by this regulation. One commentator asked that the proposed regulation not be adopted because Schedule UTP would require the disclosure of privileged information. If the regulation is adopted, the commentator recommended it should state that taxpayer may assert any applicable privileges to providing information sought by Schedule UTP and that any disclosure of information on that schedule will not constitute a waiver of any applicable privilege.

The final regulation does not adopt this recommendation. The regulation addresses the IRS's authority to require certain corporations to provide information concerning uncertain tax positions. The IRS has decided to require the filing of Schedule UTP based on its determination that the information about uncertain tax positions taken in a tax return required by the schedule is essential to achieving an effective and efficient self-assessment tax system. Provisions relating to the assertion of privilege are not included in this regulation, since it does not affect the existence of any applicable privileges taxpayers may have concerning information requested by a return or how they may assert those privileges.

Special Analyses

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

This regulation will only affect taxpayers that prepare or are required to issue audited financial statements. Small entities rarely prepare or are required to issue audited financial statements due to the expense involved. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). Accordingly, a regulatory flexibility analysis is not required. Pursuant to 5 U.S.C. 553(d)(3), it has been determined that there is good cause for the effective date of this final rule, which is less than 30 days after the date of publication.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was 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 Kathryn Zuba of the Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Adoption of 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 is amended by adding an entry in numerical order to read as follows:

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

Section 1.6012–2 is also issued under the authority of 26 U.S.C. 6011 and 6012.

Par. 2. Section 1.6012–2 is amended by adding paragraphs (a)(4) and (a)(5) to read as follows:

§1.6012–2 Corporations required to make returns of income.

(a) * * *

(4) *Disclosure of uncertain tax positions.* A corporation required to make a return under this section shall attach Schedule UTP, *Uncertain Tax Position Statement*, or any successor form, to such return, in accordance with forms, instructions, or other appropriate guidance provided by the IRS.

(5) *Effective/applicability date*. Paragraph (a)(4) of this section applies to returns filed for tax years beginning on or after January 1, 2010.

* * * * *

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved December 9, 2010.

Michael Mundaca,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on December 13, 2010, 11:15 a.m., and published in the issue of the Federal Register for December 15, 2010, 75 F.R. 78160)

Section 6229.—Period of Limitations for Making Assessments

26 CFR 301.6229(c)(2)–1: Substantial omission of income.

T.D. 9511

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Definition of Omission from Gross Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations defining an omission from gross income for purposes of the six-year minimum period for assessment of tax attributable to partnership items and the six-year period for assessing tax. The regulations resolve a continuing issue as to whether an overstatement of basis in a sold asset results in an omission from gross income. The regulations will affect any taxpayer who overstates basis in a sold asset creating an omission from gross income exceeding twenty-five percent of the income stated in the return. Additionally, provisions related to estate, gift and excise tax are reinstated from the prior final regulation.

DATES: *Effective Date*: These regulations are effective on December 14, 2010.

Applicability Date: The regulations relating to income taxes apply to taxable years with respect to which the period for assessing tax was open on or after September 24, 2009, which is the date that the proposed and temporary regulations to which these regulations relate were filed with the **Federal Register**. For dates of applicability regarding the regulations relating to estate, gift and excise taxes, see §301.6501(e)–1(e)(2).

FOR FURTHER INFORMATION CONTACT: William A. Heard, III at (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6229(c)(2) and section 6501(e) of the Internal Revenue Code. On September 28, 2009, temporary regulations (T.D. 9466, 2009–43 I.R.B. 551) regarding the definition of an omission from gross income for purposes of the six-year period for assessment were published in the **Federal Register** (74 FR 49321). A notice of proposed rulemaking (REG–108045–08, 2009–43 I.R.B. 557) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (74 FR 49354). One written comment was received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. After consideration of the comment, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed.

Summary of Comments and Explanation of Revisions

These final regulations amend the Procedure and Administration Regulations (26 CFR part 301) relating to sections 6229(c)(2) and 6501(e). In addition to the revisions set forth in the proposed regulations cross-referencing the temporary regulations, the final regulations reflect structural amendments to sections 6229(c)(2) and 6501(e) in the Hiring Incentives To Restore Employment Act (Public Law 111–147, 124 Stat. 112) to accommodate an additional threshold triggering the six-year period of limitations for omissions from gross income attributable to assets subject to certain reporting requirements, which is not otherwise addressed in these final regulations. The final regulations also clarify the effective/applicability date provisions in the section 6229(c)(2) and section 6501(e) regulations to eliminate a perceived ambiguity in the temporary regulations, that was brought to light by the Tax Court in *Intermountain Insurance Service of Vail v. Commissioner*, 134 T.C. No. 11 (2010), appeal docketed, No. 10–1204 (D.C. Cir.).

As explained in the preamble to the temporary regulations, the United States Courts of Appeals for the Ninth Circuit and the Federal Circuit construed section 6501(e)(1) in cases outside the trade-or-business context contrary to the interpretation provided in these final regulations, holding that an overstatement of basis does not constitute an "omission." *Bakersfield Energy Partners v. Commissioner*, 568 F.3d 767 (9th Cir. 2009); *Salman Ranch Ltd v. United States*, 573 F.3d 1362 (Fed. Cir. 2009). Those courts relied on the Supreme Court's opinion in *Colony v. Commissioner*, 357 U.S. 28 (1958), which dealt with an omission from gross income in the context of a trade or business under the predecessor of section 6501(e). The Treasury Department and the Internal Revenue Service disagree with those courts that the Supreme Court's reading of the predecessor to section 6501(e) in *Colony* applies to sections 6501(e)(1) and 6229(c)(2), for the reasons set forth in the preamble to the temporary regulations.

After publication of the temporary regulations, the Tax Court declared the temporary regulations invalid, adhering to its prior opinion in *Bakersfield Energy Partners v. Commissioner*, 128 T.C. 207 (2007). *Intermountain Insurance Service of Vail v. Commissioner*, 134 T.C. No. 11 (2010), appeal docketed, No. 10–1204 (D.C. Cir.). In part, the Tax Court in *Intermountain* concluded that the Supreme Court's opinion in *Colony* was the only permissible interpretation of the statutory language in question ("omits from gross income"). The Treasury Department and the Internal Revenue Service disagree with *Intermountain*. The Supreme Court stated in *Colony* that the statutory phrase "omits from gross income" is ambiguous, meaning that it is susceptible to more than one reasonable interpretation. The interpretation adopted by the Supreme Court in *Colony* represented that court's interpretation of the phrase but not the only permissible interpretation of it. Under the authority of *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 982–83 (2005), the Treasury Department and the Internal Revenue Service are permitted to adopt another reasonable interpretation of "omits from gross income," particularly as it is used in a new statutory setting. *See Hernandez-Carrera v.*

Carlson, 547 F.3d 1237 (10th Cir. 2008) (agencies are free to promulgate a reasonable construction of an ambiguous statute that contradicts any court's interpretation, even the Supreme Court's). The interpretation of the phrase "omits from gross income" as used in section 6501(e)(1) is currently pending before several United States Courts of Appeals.

Because these regulations are a clarification of the period of limitations provided in sections 6501(e)(1) and 6229(c)(2) and are consistent with the Secretary's application of those provisions both with respect to a trade or business (that is, gross income means gross receipts), as well as outside of the trade-or-business context (that is, the section 61 definition of gross income applies), they are applicable to all cases with respect to which the period for assessing tax was open on or after September 24, 2009, the date the temporary regulations were filed with the **Federal Register**.

1. *Retroactivity*

The sole written comment received in response to the notice of proposed rulemaking by cross-reference to the temporary regulations questioned the application of the regulations, characterizing them as retroactive, and recommended that they be applied only prospectively. The commentator stated that the temporary regulations apply with retroactive effect "in that taxable years which had closed are now reopened." The Treasury Department and the Internal Revenue Service disagree with the characterization of the regulations as retroactive. The final regulations have been clarified to emphasize that they only apply to open tax years, and do not reopen closed tax years as suggested by the commentator.

The commentator also relied on the 1996 amendments to section 7805(b) to argue that retroactively effective Treasury regulations are impermissible, with limited exceptions. The 1996 amendments to section 7805(b), however, do not apply to the regulations under sections 6229(c)(2) and 6501(e)(1). That is because those amendments are only effective for regulations that relate to statutory provisions enacted on or after July 30, 1996. Taxpayer Bill of Rights 2 (Public Law 104–168, section 1101(a), 110 Stat. 1469). Since section 6229(c)(2) was enacted in 1982 and section 6501(e)(1)(A) was enacted in 1954 (and redesignated as subparagraph (B) as part of the HIRE Act in 2010), the 1996 amendments to section 7805(b) are inapplicable to the regulations. Prior to the 1996 amendments, section 7805(b) provided, "The Secretary may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect." Although these regulations are not retroactive, a retroactive regulation interpreting sections 6229(c)(2) and 6501(e)(1) is expressly permitted by the applicable version of section 7805(b), which presumes regulations to apply retroactively unless otherwise provided.

2. *Intermountain*

The Tax Court's majority in *Intermountain* erroneously interpreted the applicability provisions of the temporary and proposed regulations, which provided that the regulations applied to taxable years with respect to which "the applicable period for assessing tax did not expire before September 24, 2009." The Internal Revenue Service will continue to adhere to the position that "the applicable period" of limitations is not the "general" three-year limitations period. The three-year limitations period is one of several limitations periods in the Internal Revenue Code, including the six-year limitations period under sections 6229(c)(2) and 6501(e)(1). The expiration of the three-year period does not "close" a taxable year if a longer period applies. Consistent with that position, the final regulations apply to taxable years with respect to which the six-year period for assessing tax under section 6229(c)(2) or 6501(e)(1) was open on or after September 24, 2009. This includes, but is not limited to, all taxable years (1) for which six years had not elapsed from the later of the date that a tax return was due or actually filed, (2) that are the subject of any case pending before any court of competent jurisdiction (including the United States Tax Court and Court of Federal Claims) in which a decision had not become final (within the meaning of section 7481) or (3) with respect to which the liability at issue had not become fixed pursuant to a closing agreement entered into under section 7121. The Internal Revenue Service's position is consistent with the effective/applicability date provisions of these final regulations.

3. *Other Revisions*

The final regulations are amended to reinstate estate, gift and excise tax provisions that were inadvertently removed by the temporary regulations.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose 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 NPRM cross-referencing the temporary regulations preceding these regulations was 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 William A. Heard III of the Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

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 is amended by adding the entry in numerical order to read in part as follows:

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

Section 301.6229(c)(2)–1 is also issued under 26 U.S.C. 6230(k). * * *

Par. 2. Section 301.6229(c)(2)–1 is added to read as follows:

§301.6229(c)(2)–1 Substantial omission of income.

(a) *Partnership return*—(1) *General rule*. (i) If any partnership omits from the gross income stated in its return an amount properly includible therein and that amount is described in clause (i) of section 6501(e)(1)(A), subsection (a) of section 6229 shall be applied by substituting "6 years" for "3 years."

(ii) For purposes of paragraph (a)(1)(i) of this section, the term *gross income*, as it relates to a trade or business, means the total of the amounts received or accrued from the sale of goods or services, to the extent required to be shown on the return, without reduction for the cost of those goods or services.

(iii) For purposes of paragraph (a)(1)(i) of this section, the term *gross income*, as it relates to any income other than from the sale of goods or services in a trade or business, has the same meaning as provided under section 61(a), and includes the total of the amounts received or accrued, to the extent required to be shown on the return. In the case of amounts received or accrued that relate to the disposition of property, and except as provided in paragraph (a)(1)(ii) of this section, gross income means the excess of the amount realized from the disposition of the property over the unrecovered cost or other basis of the property. Consequently, except as provided in paragraph (a)(1)(ii) of this section, an understated amount of gross income resulting from an overstatement of unrecovered cost or other basis constitutes an omission from gross income for purposes of section 6229(c)(2).

(iv) An amount shall not be considered as omitted from gross income if information sufficient to apprise the Commissioner of the nature and amount of the item is disclosed in the return, including any schedule or statement attached to the return.

(b) *Effective/applicability date*. The rules of this section apply to taxable years with respect to which the period for assessing tax was open on or after September 24, 2009.

§301.6229(c)(2)–1T [Removed]

Par. 3. Section 6229(c)(2)–1T is removed.

Par. 4. Section 301.6501(e)–1 is added to read as follows:

§301.6501(e)–1 Omission from return.

(a) *Income taxes*—(1) *General rule*. (i) If a taxpayer omits from the gross income stated in the return of a tax imposed by subtitle A of the Internal Revenue Code an amount properly includible therein that is in excess of 25 percent of the gross income so stated, the tax may be assessed, or a proceeding in court for the collection of that tax may be begun without assessment, at any time within 6 years after the return was filed.

(ii) For purposes of paragraph (a)(1)(i) of this section, the term *gross income*, as it relates to a trade or business, means the total of the amounts received or accrued from the sale of goods or services, to the extent required to be shown on the return, without reduction for the cost of those goods or services.

(iii) For purposes of paragraph (a)(1)(i) of this section, the term *gross income*, as it relates to any income other than from the sale of goods or services in a trade or business, has the same meaning as provided under section 61(a), and includes the total of the amounts received or accrued, to the extent required to be shown on the return. In the case of amounts received or accrued that relate to the disposition of property, and except as provided in paragraph (a)(1)(ii) of this section, *gross income* means the excess of the amount realized from the disposition of the property over the unrecovered cost or other basis of the property. Consequently, except as provided in paragraph (a)(1)(ii) of this section, an understated amount of gross income resulting from an overstatement of unrecovered cost or other basis constitutes an omission from gross income for purposes of section 6501(e)(1)(A)(i).

(iv) An amount shall not be considered as omitted from gross income if information sufficient to apprise the Commissioner of the nature and amount of the item is disclosed in the return, including any schedule or statement attached to the return.

(b) *Estate and gift taxes*—(1) If the taxpayer omits from the gross estate as stated in the estate tax return, or from the total amount of the gifts made during the period for which the gift tax return was filed (see §25.6019–1 of this chapter) as stated in the gift tax return, an item or items properly includible therein the amount of which is in excess of 25 percent of the gross estate as stated in the estate tax return, or 25 percent of the total amount of the gifts as stated in the gift tax return, the tax may be assessed, or a proceeding in court for the collection thereof may be begun without assessment, at any time within 6 years after the estate tax or gift tax return, as applicable, was filed.

(2) For purposes of this paragraph (b), an item disclosed in the return or in any schedule or statement attached to the return in a manner sufficient to apprise the Commissioner of the nature and amount thereof shall not be taken into account in determining items omitted from the gross estate or total gifts, as the case may be. Further, there shall not be taken into account in computing the 25 percent omission from the gross estate stated in the estate tax return or from the total gifts stated in the gift tax return, any increases in the valuation of assets disclosed on the return.

(c) *Excise taxes*—(1) *In general*. If the taxpayer omits from a return of a tax imposed under a provision of subtitle D an amount properly includible thereon, which amount is in excess of 25 percent of the amount of tax reported thereon, the tax may be assessed or a proceeding in court for the collection thereof may be begun without assessment, at any time within 6 years after the return was filed. For special rules relating to chapter 41, 42, 43 and 44 taxes, see subparagraphs (2), (3), (4) and (5) of this paragraph (c).

(2) *Chapter 41 excise taxes*. If an organization discloses an expenditure in its return (or in a schedule or statement attached thereto) in a manner sufficient to apprise the Commissioner of the existence and nature of the expenditure, the three-year limitation on assessment and collection described in section 6501(a) shall apply with respect to any tax under chapter 41 arising from the expenditure. If a taxpayer fails to so disclose an expenditure in its return (or in a schedule or statement attached thereto), the tax arising from the expenditure not so disclosed may be assessed, or a proceeding in court for the collection of the tax may be begun without assessment, at any time within 6 years after the return was filed.

(3) *Chapter 42 excise taxes*. (i) If a private foundation omits from its annual re-

turn with respect to the tax imposed by section 4940 an amount of tax properly includible therein that is in excess of 25 percent of the amount of tax imposed by section 4940 that is reported on the return, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without assessment, at any time within 6 years after the return was filed. If a private foundation discloses in its return (or in a schedule or statement attached thereto) the nature, source, and amount of any income giving rise to any omitted tax, the tax arising from the income shall be counted as reported on the return in computing whether the foundation has omitted more than 25 percent of the tax reported on its return.

(ii) If a private foundation, trust, or other organization (as the case may be) discloses an item in its return (or in a schedule or statement attached thereto) in a manner sufficient to apprise the Commissioner of the existence and nature of the item, the three-year limitation on assessment and collection described in section 6501(a) shall apply with respect to any tax imposed under sections 4941(a), 4942(a), 4943(a), 4944(a), 4945(a), 4951(a), 4952(a), 4953 and 4958, arising from any transaction disclosed by the item. If a private foundation, trust, or other organization (as the case may be) fails to so disclose an item in its return (or in a schedule or statement attached thereto), the tax arising from any transaction not so disclosed may be assessed or a proceeding in court for the collection of the tax may be begun without assessment, at any time within 6 years after the return was filed.

(4) *Chapter 43 excise taxes*. If a taxpayer discloses an item in its return (or in a schedule or statement attached thereto) in a manner sufficient to apprise the Commissioner of the existence and nature of the item, the three-year limitation on assessment and collection described in section 6501(a) shall apply with respect to any tax imposed under sections 4971(a), 4972, 4973, 4974 and 4975(a), arising from any transaction disclosed by the item. If a taxpayer fails to so disclose an item in its return (or in a schedule or statement attached thereto), the tax arising from any transaction not so disclosed may be assessed, or a proceeding in court for the collection of the tax may be begun without assessment, at any time within 6 years after the return was filed. The applicable return for the tax under sections 4971, 4972, 4973 and 4974, is the return designated by the Commissioner for reporting the respective tax. The applicable return for the tax under section 4975 is the return filed by the plan used to report the act giving rise to the tax.

(5) *Chapter 44 excise taxes*. If a real estate investment trust omits from its annual return with respect to the tax imposed by section 4981 an amount of tax properly includible therein that is in excess of 25 percent of the amount of tax imposed by section 4981 that is reported on the return, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without assessment, at any time within 6 years after the return was filed. If a real estate investment trust discloses in its return (or in a schedule or statement attached thereto) the nature, source, and amount of any income giving rise to any omitted tax, the tax arising from the income shall be counted as reported on the return in computing whether the trust has omitted more than 25 percent of the tax reported on its return.

(d) *Exception*. The provisions of this section do not limit the application of section 6501(c).

(e) *Effective/applicability date*—(1) *Income taxes*. The rules set forth in paragraph (a) of this section apply to taxable years with respect to which the period for assessing tax was open on or after September 24, 2009.

(2) *Estate, gift and excise taxes*. Paragraphs (b) through (d) of this section continue to apply as they did prior to being removed inadvertently on September 28, 2009. Specifically, paragraph (b) of this section applies to returns filed on or after May 2, 1956, except for the amendment to paragraph (b)(1) of this section that applies to returns filed on or after December 29, 1972. Paragraph (c) of this section applies to returns filed on or after October 7, 1982, except for the amendment to paragraph (c)(3)(ii) of this section that applies to returns filed on or after January 10, 2001. Paragraph (d) of this section applies to returns filed on or after May 2, 1956.

§301.6501(e)–1T [Removed].

Par. 5. Section 301.6501(e)–1T is removed.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved December 13, 2010.

Michael Mundaca,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on December 14, 2010, 4:15 p.m., and published in the issue of the Federal Register for December 17, 2010, 75 F.R. 78897)

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2011. See Rev. Rul. 2011-4, page 448.

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 February 2011. See Rev. Rul. 2011-4, page 448.

Part III. Administrative, Procedural, and Miscellaneous

Branded Prescription Drug Sales

Notice 2011–9

Purpose

This notice modifies, restates, and supersedes Notice 2010–71, 2010–50 I.R.B. 822, which provides guidance on the annual fee imposed by section 9008 of the Affordable Care Act on certain manufacturers and importers (covered entities) of branded prescription drugs. The modifications reflected in this notice affect Part I — Information Requested from Covered Entities, Part II — Preliminary Fee Calculation for 2011, and Part III — Request for Comments. All other sections of Notice 2010–71 are restated in this notice without change.

Modifications Made to Notice 2010–71

Notice 2010–71, Part I — Information Requested from Covered Entities, asks covered entities to submit five general items of information on Form 8947, *Report of Branded Prescription Drug Information*. The Treasury Department and the IRS received a number of comments on the information requested on Form 8947. In response to these comments, this notice makes the following changes to the section on Information Requested from Covered Entities:

- Item 1 (controlled group). The instructions to Form 8947 provided that each designated entity should list information on "all" members of its controlled group. This item is modified to clarify that information is requested for only those members of the controlled group that are manufacturers and importers with gross receipts from the sale of a branded prescription drug(s) to a specified government program(s).
- Item 3 (orphan drugs). Notice 2010–71 provided for reporting of each orphan drug for which a covered entity was allowed a section 45C credit. In response to comments, this item is modified to provide that for purposes of section 9003(e)(3), the credit is considered "allowed" for any particular drug if any person claimed the credit. Thus, the section 45C credit is considered to be allowed if any entity claimed the credit even if that entity was not part of the covered entity at the time the credit was claimed.
- Item 4 (Medicare Part D rebates). Notice 2010–71 provided for reporting of rebates for drug sales as taken into account on a covered entity's tax return. Commentators indicated that pharmaceutical manufacturers generally compile rebate information at an aggregate entity level for tax purposes, rather than at the drug product level. In response to these comments, this item is revised to provide that rebates should be reported for drugs dispensed in the 2009 sales year if the rebates are paid before Form 8947 is filed.
- Item 5 (Medicaid rebates). This item is also revised in response to the comments about the difficulty of reporting rebates as taken into account on the covered entity's tax return. This item is revised to require reporting of rebates invoiced by states for drugs reimbursed by states in the 2009 sales year and paid before Form 8947 is filed.
- Reporting of rebate information. This notice provides that rebate information will be taken into account in calculating a covered entity's annual fee for 2011 only if it is reported on a timely filed Form 8947.

Notice 2010–71, Part II — Preliminary Fee Calculation for 2011, provides the due date for filing Form 8947 and a time schedule for notification of the preliminary fee calculation for 2011. Commentators requested additional time to file Form 8947. In response to these comments, the due date for filing Form 8947 is deferred to February 11, 2011, and the remaining time schedule for preparing the preliminary fee calculation has been revised accordingly.

Notice 2010–71, Part III — Request for Comments, is revised to defer the deadline for submitting comments to June 15, 2011.

Restatement of Notice 2010–71, as modified by this notice

This notice provides guidance on the annual fee imposed on covered entities engaged in the business of manufacturing or importing branded prescription drugs by section 9008 of the Patient Protection and Affordable Care Act (ACA), Public Law 111–148 (124 Stat. 119 (2010)), as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010 (HCERA), Public Law 111–152 (124 Stat. 1029 (2010)). All references in this notice to section 9008 are references to section 9008 of the ACA, as amended by section 1404 of HCERA.

Part I of this notice describes a proposed methodology for calculating the section 9008 fee. Part II of this notice describes how the Internal Revenue Service (IRS) will use this proposed methodology to provide each covered entity with a preliminary 2011 fee calculation. The IRS and Treasury Department intend that a covered entity's preliminary fee calculation for 2011 will serve as a basis for comments by the covered entity on the proposed methodology. Part III of this notice solicits public comments on all aspects of the notice.

Part I — Proposed Methodology for Calculating the Fee

Section 9008(b)(4) sets an applicable fee amount for each year, beginning with 2011, that will be allocated among covered entities with aggregate branded prescription drug sales of over $5 million to specified government programs or pursuant to coverage under such programs. Section 9008(e)(2) provides that "branded prescription drug" means (i) any prescription drug the application for which was submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)), or (ii) any biological product the license for which was submitted under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)). The specified government programs are the Medicare Part B program, the Medicare Part D program, the Medicaid program, any program under which branded prescription drugs are procured by the Department of Veterans Affairs, any program under which branded prescription drugs are procured by the Department of Defense, and the TRICARE retail pharmacy program (collectively, the Programs). The applicable fee amount is allocated among the covered entities using a formula specified in section 9008(b) based on sales to the Programs, which sales data is to be provided by the Centers for Medicare and Medicaid Services of the Department of Health and Human Services (CMS), the Department of Veterans Affairs (VA), and the Department of Defense (DOD) (collectively, the Agencies).

There are two years relevant to the calculation of the section 9008 fee — the calendar year in which the fee must be paid (herein referred to as the fee year) and the calendar year of the branded prescription drug sales, which will be used to determine the amount of the fee (herein referred to as the sales year). As discussed more fully below, the IRS and Treasury Department are proposing to use the second calendar year proceeding the fee year as the sales year for purposes of calculating the section 9008 fee. An adjustment amount will also be calculated as discussed below.

Definition of Covered Entity

Section 9008(a) imposes the fee on each covered entity engaged in the business of manufacturing or importing branded prescription drugs. Section 9008(d)(1) defines a covered entity as "any manufacturer or importer with gross receipts from branded prescription drug sales." For purposes of section 9008(a), a manufacturer or importer is the person identified in the Labeler Code of the National Drug Code (NDC) for a branded prescription drug. The NDC is an identifier assigned by the Food and Drug Administration (FDA) to a branded prescription drug, as well as other drugs. The Labeler Code is the first five numeric characters of the NDC or the first six numeric characters when the available five-character code combinations are exhausted.

Section 9008(d)(2) provides a controlled group rule under which all persons treated as a single employer under section 52(a), 52(b), 414(m), or 414(o) of the Internal Revenue Code (Code) shall be treated as a single covered entity. For this purpose, a foreign entity subject to tax under section 881 is included within a controlled group under section 52(a) or 52(b). This controlled group rule will be applied as of the end of the day on December 31 of the sales year. All persons treated as a single employer under section 9008(d)(2) are jointly and severally liable for the fee. See section 9008(d)(3).

In the case of a controlled group that is treated as a single covered entity under section 9008(d)(2), the controlled group must identify a single person as the "designated entity" that may act for the controlled group with respect to the section 9008 fee. If the controlled group, without regard to foreign corporations included under section 9008(d)(2)(B), is also an affiliated group that filed a consolidated return for federal income tax purposes, the designated entity is the common parent of the affiliated group as identified on the tax return filed for the sales year. In all other situations, the controlled group must select a person as the designated entity on Form 8947, *Report of Branded Prescription Drug Information*[1] (discussed further below), which is signed by the designated entity under penalties of perjury, stating that all the manufacturers or importers of branded prescription drugs who are members of the covered entity have consented to the selection of the designated entity.

Sales Taken Into Account

Section 9008(b) provides that the annual fee for each covered entity is calculated by determining the ratio of (i) the covered entity's branded prescription drug sales taken into account during the preceding calendar year to (ii) the aggregate branded prescription drug sales taken into account for all covered entities during the same year, and applying this ratio to the applicable amount as specified in the statute. "Sales taken into account" means sales exclusive of certain orphan drugs and after application of the percentage adjustment table in section 9008(b)(2). Section 9008(b)(1) provides that the calculation of the fee in any given year is based on branded prescription drug sales in the immediately preceding calendar year.

Section 9008(b)(3) provides that the Secretary of the Treasury shall determine the amount of each covered entity's fee. In determining that amount, the Secretary may rely on reports submitted by the Agencies and any other source of information. Section 9008(i) also provides the Secretary with regulatory authority to carry out the purposes of the statute.

The IRS and Treasury Department have determined that, although the DOD and VA are expected to have complete data on branded prescription drug sales for the calendar year immediately preceding the fee year within the time frame necessary to administer the fee, CMS is not expected to have comparable data because it cannot complete its data processing within the necessary time frame. Accordingly, the IRS and Treasury Department will calculate the fee based on the branded prescription drug sales data provided by the Agencies for the second calendar year preceding the fee year. Because the use of the second preceding year, rather than the immediately preceding year, as the sales year may affect the amount of the fee paid by any particular covered entity, the fee due in every year after 2011 will include an adjustment amount.

Adjustment Methodology

An adjustment amount will be calculated for each NDC and will be added or subtracted, as appropriate, to the fee otherwise payable by the covered entity responsible for the NDC in the fee year in which the adjustment is calculated. The adjustment amount added or subtracted to the amount payable in a fee year will reflect the difference between the fee determined for the NDC in the immediately prior fee year, using data from the second calendar year preceding that fee year, and what the fee for that NDC would have been for the immediately prior fee year using data from the calendar year immediately preceding that prior fee year. For example, the amount due from a covered entity in the 2012 fee year will include an adjustment amount for each NDC for which the covered entity is responsible in 2012 equal to the difference between the 2011 fee associated with that NDC using 2009 data, and what the 2011 fee for that NDC would have been using 2010 data.

To calculate the adjustment amount for an NDC, the IRS will first determine two ratios: one based on data from the second preceding calendar year; and the other based on data from the third preceding calendar year. In both cases, the numerator of

[1] The Office of Management and Budget approved Form 8947 under control number 1545–2192.

the ratio is the sales taken into account for the particular NDC during the relevant calendar year, and the denominator of the ratio is aggregate branded prescription drug sales taken into account for all NDCs during the relevant calendar year. For each NDC, the IRS will then take the difference between the ratio using second preceding year data and the ratio using third preceding year data and multiply that amount by the applicable amount of the fee for the relevant fee year, as set forth in section 9008(b)(4), to determine an adjustment for the NDC. The adjustment amount for any particular NDC will then be added to, or subtracted from, as appropriate, the amount of the fee otherwise payable by the covered entity associated with the NDC for the fee year in which the adjustment amount is calculated.

For example, in 2012 the fee payable by each covered entity will consist of two components. First, the applicable amount for 2012 will be allocated to the covered entities based on sales data for 2010 (*i.e.*, the second preceding calendar year). Second, an adjustment amount will be calculated in 2012 for each NDC with respect to the 2011 fee year, by multiplying (i) the difference between the sales ratio determined using 2010 data and the sales ratio determined using 2009 data by (ii) the applicable amount of the fee for 2011. The adjustment amount for each NDC will then be added to, or subtracted from, as appropriate, the fee otherwise payable in 2012 by the covered entity associated with the NDC for the 2012 fee year.

The adjustment amount is applied only with respect to the amount of the fee otherwise payable by the relevant covered entity in the year in which the adjustment is calculated, and is not a refund, credit, or recalculation of a fee payable by any covered entity in any preceding fee year. In any given fee year, the amount assessed by the IRS will be based on data provided to it by the Agencies. The IRS does not intend to recalculate either the fee allocations or the adjustment amounts based on data that becomes available after those amounts are assessed.

Information Requested from Covered Entities

Annually, each covered entity should submit a Form 8947 and provide the information specified by the form and instructions. The designated entity for a covered entity described in section 9008(d)(2) submits a single form for the covered entity. A covered entity should submit a completed Form 8947 by December 15 of each year unless an alternative date is prescribed by the form or instructions. The Form 8947 information is return information subject to the confidentiality protections of section 6103. The IRS will take into account the rebate information in calculating a covered entity's annual fee for 2011 only if the rebate information is reported in accordance with items 4 and 5 below on a timely filed Form 8947. Form 8947 is available at *http://www.irs.gov*.

Form 8947 solicits the following information from each covered entity:

1. For a single-person covered entity, the covered entity's name, address, and employer identification number. For a covered entity described in section 9008(d)(2), the name, address, and employer identification number of the designated entity and each manufacturer or importer with gross receipts from the sale of branded prescription drugs to specified government programs (or sales due to coverage under the programs) that was included in the covered entity as of the end of the day on December 31 of the sales year.

Part I of Form 8947 instructions are revised by this notice to provide that each designated entity should list the name, address, and employer identification number of itself and each manufacturer or importer with gross receipts from the sale of branded prescription drugs to specified government programs (or sales due to coverage under the programs) that was included in the covered entity as of the end of the day on December 31 of the sales year.

2. All of the NDCs for branded prescription drugs in which the covered entity is identified in the labeler code as of the end of the day on December 31 of the sales year. For a covered entity described in section 9008(d)(2), this includes all NDCs in which a member of the covered entity is identified in the labeler code as of the end of the day on December 31 of the sales year.

3. The brand name and NDC for each orphan drug for which a credit was allowed for any taxable year under section 45C of the Code. For purposes of section 9008(e)(3), the credit was "allowed" for any particular drug if any person claimed the credit and there has not been a final assessment or a court order disallowing the full credit taken for the drug. In addition, even if the credit has been allowed, a covered entity must not report an NDC for an orphan drug for any sales year following the calendar year in which the FDA approved the drug for marketing for any indication other than the treatment of the rare disease or condition for which the section 45C credit was allowed.

4. The rebates for each NDC paid for the sales year by the covered entity to Medicare Part D plans with respect to sales occurring in that sales year. For this purpose, report rebates paid for drugs dispensed in the 2009 sales year if paid before Form 8947 is filed. This information is needed for the 2009 sales year because, at this time, CMS does not have rebate data on branded prescription drug sales by NDC. However, starting in 2011, CMS is planning to collect this rebate information by NDC for the 2010 and subsequent sales years. It is therefore possible that covered entities will not report this rebate information for years following 2009.

5. The state supplemental rebates for each NDC paid in the sales year by the covered entity with respect to sales under Medicaid occurring in that sales year. For this purpose, report rebates invoiced by states for drugs reimbursed by states in the 2009 sales year and paid before Form 8947 is filed. This information is needed because Medicaid data will not include state supplemental rebates.

Information Provided by the Agencies

The IRS will compile a list of branded prescription drugs by NDC using the data submitted on Forms 8947. Appropriate due diligence will be performed to check for potential oversights. For example, the IRS may use information published by the FDA identifying drugs for which applications were submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act. The IRS will provide the Agencies with the compiled list of branded prescription drugs.

For each year in which the fee is due, the Agencies will provide data to the IRS on the branded prescription drug sales during the sales year by Program and NDC.

The calculation methodology for each Program, including any reasonable estimation techniques and assumptions that the Agencies expect to use, are described below.

1. *Medicare Part D*. Section 9008 requires CMS to report the product of the per-unit ingredient cost reported by Part D sponsors (net of any per-unit rebate or other price concessions) and the number of units for each branded prescription drug. CMS currently collects prescription level encounter data from Part D sponsors on the Prescription Drug Event (PDE) records. On the PDE records, Part D sponsors report the NDC, as well as the ingredient cost, dispensing fee, sales tax, and units. CMS will aggregate the ingredient cost reported in the "Ingredient Cost Paid" field and the units reported in the "Quantity Dispensed" field of the PDE records for Part D covered drugs. These amounts will be aggregated at the NDC level for each sales year. Only PDE data that Part D sponsors have submitted by the PDE submission deadline (within 6 months after the end of the sales year) and have been approved for inclusion in the Part D payment reconciliation will be included.

2. *Medicare Part B*. First, for Healthcare Common Procedure Coding System (HCPCS) codes that consist solely and exclusively of branded prescription drugs (as identified by their respective NDCs) manufactured by a single entity, CMS will provide the total Medicare-allowed charges for the HCPCS code for the appropriate sales year.

Second, for HCPCS codes consisting of a mixture of branded prescription drugs made by different manufacturers or a mixture of branded prescription and generic drugs, CMS will determine: (i) the total Medicare-allowed charges for the HCPCS code for the appropriate sales year; (ii) the entities engaged in manufacturing each NDC assigned to the HCPCS code; and (iii) those entities (if any) that are manufacturing branded prescription drugs. CMS will then: (i) estimate the amount of Medicare-allowed charges for each manufacturer by applying the utilization percentage attributed to each manufacturer as determined under the Medicare Part B Program using manufacturer reported Average Sales Price sales data; (ii) multiply that percentage by the Medicare-allowed charge for that HCPCS code; and (iii) assign the result to each manufacturer within that HCPCS code.

Third, for the remainder of HCPCS codes that consist of multiple branded prescription drugs (as identified by their respective NDCs) manufactured by multiple entities that cannot be reliably calculated using the two methods above, CMS will determine: (i) the total Medicare-allowed charges for the HCPCS code for the appropriate sales year; (ii) the entities engaged in manufacturing each NDC assigned to the HCPCS code; and (iii) those entities (if any) that are manufacturing branded prescription drugs. CMS will then: (i) estimate the amount of Medicare-allowed charges for each manufacturer by applying the utilization percentage attributed to each manufacturer as determined under the Medicare Part D Program; (ii) multiply that percentage by the Medicare-allowed charge for that HCPCS code; and (iii) assign the result to each manufacturer within that HCPCS code.

Thus, the amounts attributed to branded prescription drugs within the HCPCS code will be estimated. CMS will calculate the sum of these components to arrive at an estimate of Medicare Part B spending on branded prescription drugs for each manufacturer.

3. *Medicaid*. The branded prescription drug sales for Medicaid may be determined as the per-unit Average Manufacturer Price less the Unit Rebate Amounts (URA) that CMS calculates based on manufacturer-reported pricing data multiplied by the number of units reported billed by states to manufacturers. This data would be based on the data reported to Medicaid by covered entities and the states. CMS does not currently intend to reduce this calculation for state supplemental rebates.

4. *Department of Veterans Affairs*. VA will provide, by NDC, the total amount paid for each branded prescription drug procured by the VA for its beneficiaries. The basis of this information will be national procurement data reported by VA's Pharmaceutical Prime Vendor to the VA Pharmacy Benefits Management Service and National Acquisition Center. This information will not include procurement data that resides exclusively at the individual medical treatment facility level.

5. *Department of Defense*. The DOD will provide, by Labeler Code, the manufacturer's name, the NDC, brand name, and the amount paid (net of rebates) for each branded prescription drug procured by DOD. TRICARE Management Activity will provide, by Labeler Code, the manufacturer's name, the NDC, brand name, and the amount paid (net of refunds or rebates) for each branded prescription drug procured by DOD through the TRICARE Retail Pharmacy Program.

Fee calculation

After receiving data from the Agencies and information from the covered entities, the IRS will calculate each covered entity's branded prescription drug sales for each Program by NDC. A covered entity's branded prescription drug sales for each Program will equal (i) the sum of all the covered entity's branded prescription drug sales reported by the Program, less (ii) the sum of all branded prescription drug sales reported by the Program for each NDC for which the covered entity has appropriately claimed the orphan drug exclusion, less (iii) the sum of rebates reported by the covered entity on Form 8947 for the sales year.

After calculating the branded prescription drug sales for each Program, the IRS will calculate each covered entity's branded prescription drug sales taken into account for purposes of the ratio set forth in section 9008(b)(1). A covered entity's branded prescription drug sales taken into account for purposes of section 9008(b)(1)(A) will equal the sum of the covered entity's branded prescription drug sales for all Programs reduced by the appropriate percentages set forth in section 9008(b)(2). The IRS will then calculate the aggregate branded prescription drug sales of all covered entities taken into account for purposes of section 9008(b)(1)(B), which is the sum of all the covered entities branded prescription drug sales taken into account for purposes of section 9008(b)(1)(A).

To determine each covered entity's fee, the IRS will divide each covered entity's branded prescription drug sales taken into account for purposes of section 9008(b)(1)(A) by the aggregate branded prescription drug sales of all covered entities taken into account for purposes of section 9008(b)(1)(B) and multiply that fraction by the applicable amount for the appropriate year as set forth in section 9008(b)(4).

Part II — Preliminary Fee Calculation for 2011

The IRS will use the proposed methodology described in Part I to provide each covered entity with a preliminary 2011 fee calculation. The notification of the preliminary fee calculation will include the following: (1) the covered entity's fee; (2) the covered entity's branded prescription drug sales, by NDC, for each Program; (3) the covered entity's branded prescription drug sales taken into account after application of section 9008(a)(2); and (4) the aggregate branded prescription drug sales taken into account for all covered entities.

To facilitate the preliminary 2011 fee calculation, Form 8947 should be submitted to the IRS by February 11, 2011. From the data on the Forms 8947, the IRS will compile a list of NDCs and provide that list to the Agencies as soon as the data has been processed. The IRS will use the data submitted on the Forms 8947 and the sales data provided by the Agencies to calculate the preliminary fee and will send to each covered entity notification of its preliminary fee calculation by May 16, 2011.

If the IRS and Treasury Department subsequently promulgate regulations that modify the methodology for calculating each covered entity's fee, the modified methodology will be adopted in determining the final fee amount for each covered entity for 2011. Thus, if the methodology changes, the amount of the final fee for 2011 may vary from the preliminary fee calculation. The IRS will send the final fee calculation to each covered entity by August 15, 2011.

Part III — Request for comments

The IRS and Treasury Department request comments on the procedures described in this notice for consideration when promulgating regulations setting forth procedures for 2011 and the following years. The deadline for submission of comments is June 15, 2011. This date will give covered entities the opportunity to consider the information received in their preliminary fee calculation when providing comments. All materials submitted will be available for public inspection and copying. Written comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2011–9), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2011–9), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Comments may be transmitted electronically via the following e-mail address: *Notice.Comments@irscounsel.treas.gov*. Please include "Notice 2011–9" in the subject line of any electronic communications.

Effect on Other Documents

Notice 2010–71 is modified and superseded.

Drafting Information

The principal author of this notice is Celia A. Gabrysh of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Celia A. Gabrysh at (202) 622–3130 (not a toll-free call). For further information regarding Form 8947, contact Lou Milano at (908) 301–2118 (not a toll-free call).

Biodiesel and Alternative Fuels; Claims for 2010; Excise Tax

Notice 2011–10

Section 1. PURPOSE

This notice provides rules under which taxpayers may make a one-time claim for payment of the credits and payments allowable under §§ 6426 and 6427 of the Internal Revenue Code (Code) for biodiesel (including renewable diesel) mixtures, alternative fuels, and alternative fuel mixtures sold or used during calendar year 2010 (collectively, 2010 biodiesel and alternative fuel incentives). These rules are prescribed under §§ 701(c) (biodiesel) and 704(c) (alternative fuel) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Act) (Pub. L. 111–312).

Section 2. BACKGROUND

Sections 6426(a) and (c) allow a blender of a biodiesel (including renewable diesel) mixture to claim a $1.00-per-gallon credit against its tax liability under § 4081 (relating to the tax imposed on taxable fuel). The blender may claim any excess as a payment under § 6427(e) or as a refundable income tax credit under § 34. Similar rules apply to blenders of alternative fuel mixtures (§ 6426(e)) and to persons that sell or use alternative fuel as a fuel in a motor vehicle or a motorboat and in aviation (§ 6426(d)), except that the credit amount is $0.50 per gallon and the credit for alternative fuel is taken against the claimant's tax liability under § 4041 (relating to the tax imposed on diesel fuel and alternative fuel). As an alternative to the payments and credits allowed under §§ 6426, 6427, and 34, a blender of a biodiesel (including renewable diesel) mixture may claim a nonrefundable income tax credit under § 40A (see Section 3 of this notice for additional information).

The Code provisions that authorize these credits and payments expired for sales and uses after December 31, 2009, but were reinstated by the Act for sales and uses during 2010 and 2011. Sections 701(c) and 704(c) of the Act direct the Secretary of the Treasury (Secretary) to issue guidance providing for a one-time submission of claims under §§ 6426 and 6427 covering periods during 2010. The Act requires the guidance to provide for a 180-day period for the submission of claims (in such manner as prescribed by the Secretary) to begin not later than 30 days after the guidance is issued.

Section 3. SCOPE

This notice provides the only method for claiming 2010 biodiesel and alternative fuel incentives. The Internal Revenue Service (IRS) will neither process nor pay claims for 2010 biodiesel and alternative fuel incentives submitted by any method, or on any form, that is not described in this notice. Thus, the IRS will neither process nor pay 2010 biodiesel and alternative fuel incentive claims that are submitted on Form 720, *Quarterly Federal Excise Tax Return*. In addition, claimants that filed "protective" or anticipatory claims during 2010 for biofuel and alternative fuel incentives covered by this notice must refile their claims pursuant to the procedures provided in this notice. The IRS will neither process nor pay protective or anticipatory claims previously filed with the IRS.

Except as provided by this notice, the rules in Notice 2005–4, 2005–1 C.B. 289 (as modified by Notice 2005–62, 2005–2 C.B. 443), and Notice 2006–92, 2006–2 C.B. 774, apply to claims for 2010 biodiesel and alternative fuel incentives. However, § 704(b) of the Act modifies the definition of alternative fuel under § 6426(d)(2) to exclude any fuel (including lignin, wood residues, or spent pulping liquors) derived from the production of paper or pulp. Thus, black liquor, a byproduct of the paper milling process in kraft mills, is not eligible for credits and payments related to the sale or use of alternative fuel mixtures after December 31, 2009.

This notice does not affect 2010 claims for the alcohol fuel mixture credit under § 6426(b) or the alcohol fuel mixture payment under § 6427(e). Taxpayers should continue to submit these claims separately on, and in accordance with, the appropriate form and form instructions for those claims.

The credit for liquefied hydrogen did not expire at the end of 2009, and claims relating to liquefied hydrogen sold or used during 2010 may be submitted by the method prescribed in this notice (if the credit was not previously claimed) or by any method that was permitted for claims relating to liquefied hydrogen sold or used before calendar year 2010.

This notice does not affect 2010 claims for the nonrefundable income tax credit under § 40A(b)(1) for biodiesel (including renewable diesel) mixtures, under § 40A(b)(2) for biodiesel (including renewable diesel), or under § 40A(b)(4) for the small agri-biodiesel producer credit. Taxpayers should continue to submit these claims separately on, and in accordance with, Form 8864, *Biodiesel and Renewable Diesel Fuels Credit*. A taxpayer must submit Form 8864 with its income tax return in accordance with the instructions to its income tax return form. Taxpayers are reminded that under § 40A(c), credits allowable under § 40A must be reduced to the extent that any benefit is claimed under §§ 6426 and 6427 with respect to the same biodiesel (including renewable diesel).

Similarly, this notice does not affect 2010 claims for the refundable income tax credit under § 34 for biodiesel mixtures, alternative fuel, or alternative fuel mixtures. Taxpayers should continue to submit these claims separately on, and in accordance with, Form 4136, *Credit for Federal Tax Paid on Fuels*. A taxpayer must submit Form 4136 with its income tax return in accordance with the instructions to its income tax return form. Taxpayers are reminded that under § 34(b), credits are not allowed under § 34 for any amount properly payable under § 6427 and claimed in a timely filed claim. For this purpose, the IRS will treat as timely filed any claim submitted for amounts payable under § 6427 that conforms to the rules provided in this notice.

Section 4. HOW TO MAKE A CLAIM FOR PAYMENT OF CREDITS AND PAYMENTS ALLOWABLE UNDER §§ 6426 AND 6427

Claimants must follow the procedures listed below to make a claim under this notice for payment of credits and payments allowable under §§ 6426 and 6427.

- Claimants must submit claims for 2010 biodiesel and alternative fuel incentives on Form 8849, *Claim for Refund of Excise Taxes*.
- Claimants must include Schedule 3 (Form 8849), *Certain Fuel Mixtures and the Alternative Fuel Credit*, with their submission and enter amounts for 2010 biodiesel and alternative fuel incentives on Line 2 and Line 3 of Schedule 3, as appropriate.
- Claimants must follow the instructions to Form 8849 and Schedule 3 when preparing their submission to the extent that those instructions do not conflict with this notice.
- Each claimant must claim all 2010 biodiesel and alternative fuel incentives on a single Form 8849; the IRS will not process multiple submissions from a single claimant. Therefore, a claimant's single submission should encompass all 2010 biodiesel and alternative fuel incentives for which the claimant is eligible.
- Each claimant must mail its submission to the address listed for Schedule 3 in the instructions to Form 8849 under *Where To File*. Alternatively, claimants may electronically file Form 8849 and Schedule 3 through any electronic return originator, transmitter, or intermediate service provider participating in the IRS *e-file* program for excise taxes.
- Claimants are reminded that they must be registered by the IRS in order to make alternative fuel and alternative fuel mixture claims under §§ 6426(d), 6426(e), and 6427(e). Claimants that are not already registered by the IRS may apply to the IRS for registration by filing Form 637, *Application for Registration (For Certain Excise Tax Activities)*, in accordance with the instructions to Form 637.

Section 5. CLAIM PERIOD AND DUE DATE

Although a claimant may submit its claim under this notice as early as January 14, 2011, the 180-day claim period for 2010 biodiesel and alternative fuel incentives begins on February 2, 2011. The IRS will deem any claim that is submitted by the method prescribed in this notice before February 2, 2011, as filed on February 2, 2011. Consequently, all claims for 2010 biodiesel and alternative fuel incentives must be filed on or before August 1, 2011. The IRS will not process claims filed after that date. If the IRS does not pay a 2010 biodiesel and alternative fuel incentives claim that conforms to this notice within 60 days after the claim is received, the IRS will pay the claim with interest from the claim filing date (February 2, 2011, in the case of claims submitted before that date) using the overpayment rate and method provided by § 6621 of the Code.

Section 6. DRAFTING INFORMATION

The principal author of this notice is Michael H. Beker of the Office of Associate Chief Counsel (Passthroughs

& Special Industries). For further information regarding this notice, contact Michael H. Beker at (202) 622–3130 (not a toll-free call).

Qualified Zone Academy Bond Allocations for 2011

Rev. Proc. 2011–19

SECTION 1. PURPOSE

This revenue procedure sets forth the maximum face amount of Qualified Zone Academy Bonds ("QZABs") that may be issued for each State for the calendar year 2011 under § 54E(c)(2) of the Internal Revenue Code. Under § 54A(e)(3), the term State includes the District of Columbia and any possession of the United States.

SECTION 2. BACKGROUND

.01 INTRODUCTION

Section 313 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Div. C of Pub. L. No. 110–343, 122 Stat. 3765 (2008) ("Act") added new § 54E, which provides revised program provisions for QZABs in lieu of the existing provisions under §1397E, effective for obligations issued after October 3, 2008. The Act amended § 54A(d)(1) to provide that the term qualified tax credit bond ("QTCB") means, in part, a qualified zone academy bond which is part of an issue that meets the requirements of §§ 54A(d)(2), (3), (4), (5), and (6) regarding expenditures of bond proceeds, information reporting, arbitrage, maturity limitations, and prohibitions against financial conflicts of interest. The Act also amended § 54A(d)(2)(C) to provide that, for purposes of § 54A(d)(2), the term "qualified purpose" for a QZAB means a purpose specified in § 54E(a)(1), described below.

The Act added § 54E(c)(1) to provide a national zone academy bond limitation authorization for QZABs of $400 million for each of calendar years 2008 and 2009. Section 1522 of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, 123 Stat. 115 (2009) ("2009 Act") amended § 54E(c)(1) to provide an increased national zone academy bond limitation authorization for QZABs of $1.4 billion for each of calendar years 2009 and 2010. Section 758 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public L. No. 111–312, 124 Stat. 3296 (2010) ("2010 Act") further amended § 54E(c)(1) to provide an authorization for QZABs of $400 million for calendar year 2011.

.02 QUALIFIED ZONE ACADEMY BOND UNDER § 54E

Section 54E(d) defines "qualified zone academy" as any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level provided: (A) the public school or program is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates and prepare students for college and the workforce; (B) students will be subject to the same academic standards and assessments as other students educated by the eligible local education agency; (C) the comprehensive education plan is approved by the eligible local education agency; and (D)(i) such public school is located in an empowerment zone or enterprise community including such designated after October 3, 2008; or (ii) there is a reasonable expectation (as of the date of bond issuance) that at least 35 percent of the students will be eligible for free or reduced cost lunches under the school lunch program established under the National School Lunch Act.

Section 54E(a) provides that a "qualified zone academy bond" or QZAB means any bond issued as part of an issue if: (1) 100 percent of the available project proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency; (2) the bond is issued by a State or local government within the jurisdiction of which such academy is located, and (3) the issuer: (A) designates such bond for purposes of this section; (B) certifies that it has written assurances that the private business contribution requirement of § 54E(b) will be met; and, (C) certifies that it has the written approval of the eligible local education agency for such bond issuance.

Section 54E(d)(3) provides that a qualified purpose with respect to each academy means: (A) rehabilitating or repairing the public school facility; (B) providing equipment; (C) developing course materials; and, (D) training teachers and other school personnel. The private business contribution requirement of § 54E(b) is met if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue. Section 54E(d)(4) defines "qualified contributions" as any contribution (of a type and quality acceptable to the eligible local education agency) of: (A) equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment); (B) technical assistance in developing curriculum or in training teachers to promote appropriate market driven technology in the classroom; (C) employees' services as volunteer mentors; (D) internships, field trips, or other educational opportunities outside the academy; or (E) any other property or service specified by the eligible education agency. Section 54E(d)(2) defines "eligible local education agency" as any local educational agency as defined in § 9101 of the Elementary and Secondary Education Act of 1965.

Section 54E(c)(2) provides that the Department of the Treasury shall allocate the national zone academy bond limitation among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

Under § 54E(c)(3), the maximum aggregate face amount of bonds issued during any calendar year which may be designated as QZABs with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy for such calendar year. However, under § 54E(c)(4)(A), if for any calendar year the limitation amount for any State exceeds the amount of bonds issued during such year which are designated QZABs with respect to qualified zone academies within such State, the limitation amount for such State for the following calendar year shall be increased by the amount of such excess. Under § 54E(c)(4)(B), however, any carryforward of a limitation amount may be carried only to the first 2 years following the unused limitation year. For these purposes, the limitation amount shall be treated as used on a first-in first-out basis.

Sections 1.1397–1 (the "Final Regulations") and 1.1397–1T (the "Temporary Regulations") set forth regulations that were issued under § 1397E. For other guidance concerning the applicability of the regulations issued under § 1397E, the credit rate, and the sinking fund yield see Notice 2009–15, 2009–6 I.R.B. 449, Notice 2009–30, 2009–16 I.R.B. 852, and Notice 2010–22, 2010–10 I.R.B. 435.

SECTION 3. NATIONAL ZONE ACADEMY BOND LIMITATION FOR 2011

The national limitation for QZABs issued under § 54E for calendar year 2011 is $400 million. This amount is allocated among the States as follows:

Qualified Zone Academy Bond Allocations by State or Territory, 2011

State or Territory	QZAB Allocation (in dollars)
Alabama	$7,194,000
Alaska	$553,000
Arizona	$9,521,000
Arkansas	$4,637,000
California	$45,855,000
Colorado	$5,527,000
Connecticut	$2,841,000
Delaware	$861,000
DC	$898,000
Florida	$24,235,000
Georgia	$14,161,000
Hawaii	$1,178,000
Idaho	$1,943,000
Illinois	$14,932,000
Indiana	$8,001,000
Iowa	$3,058,000
Kansas	$3,213,000
Kentucky	$6,896,000
Louisiana	$6,870,000
Maine	$1,443,000
Maryland	$4,549,000
Massachusetts	$5,883,000
Michigan	$13,987,000
Minnesota	$4,986,000
Mississippi	$5,543,000
Missouri	$7,597,000
Montana	$1,271,000
Nebraska	$1,897,000
Nevada	$2,892,000
New Hampshire	$990,000
New Jersey	$7,132,000
New Mexico	$3,208,000
New York	$24,194,000
North Carolina	$13,178,000
North Dakota	$651,000
Ohio	$15,181,000
Oklahoma	$5,143,000
Oregon	$4,796,000
Pennsylvania	$13,556,000
Rhode Island	$1,093,000
South Carolina	$6,730,000
South Dakota	$990,000
Tennessee	$9,431,000
Texas	$37,014,000
Utah	$2,872,000
Vermont	$618,000
Virginia	$7,197,000

Qualified Zone Academy Bond Allocations by State or Territory, 2011

State or Territory	QZAB Allocation (in dollars)
Washington	$7,176,000
West Virginia	$2,824,000
Wisconsin	$6,102,000
Wyoming	$482,000
American Samoa	$358,000
Guam	$366,000
Northern Mariana Islands	$212,000
Puerto Rico	$15,765,000
Virgin Islands	$319,000
Total Allocation	$400,000,000

SECTION 4. EFFECTIVE DATE OF NATIONAL ZONE ACADEMY BOND LIMITATIONS

The national limitation allocated in section 3 is effective for QZABs issued on or after January 1, 2011.

SECTION 5. DRAFTING INFORMATION

The principal authors of this revenue procedure are Timothy L. Jones and David E. White of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure, contact David E. White or Timothy L. Jones at (202) 622–3980 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Sales-Based Royalties and Vendor Allowances

REG–149335–08

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the capitalization and allocation of royalties that are incurred only upon the sale of property produced or property acquired for resale (sales-based royalties). This document also contains proposed regulations on adjusting the cost of merchandise inventory for an allowance, discount, or price rebate based on merchandise sales (sales-based vendor allowances). The regulations modify the simplified production method and the simplified resale method of allocating capitalized costs between ending inventory and cost of goods sold. The regulations affect taxpayers that incur capitalizable sales-based royalties and earn sales-based vendor allowances.

DATES: Written or electronic comments and a request for a public hearing must be received by March 17, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–149335–08), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–149335–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–149335–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John Roman Faron, (202) 622–4930 (not a toll-free number); concerning submission of comments or a request for a public hearing, Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 relating to the allocation under section 263A of the Internal Revenue Code (Code) of certain sales-based royalties. Sales-based royalties are royalty costs that become due only upon the sale of property. Thus, the fact of the liability arises, and the royalty is incurred within the meaning of section 461, only upon sale.

This document also contains proposed amendments to 26 CFR part 1 relating to the determination of cost of goods in inventory under section 471 when a taxpayer receives a sales-based vendor allowance. Sales-based vendor allowances are allowances, discounts, or price rebates that a reseller receives, earns, or otherwise becomes entitled to based on the resale of a vendor's merchandise to a third party.

Capitalization and Allocation of Sales-Based Royalties Under Section 263A

Section 263A requires taxpayers to capitalize the direct costs and indirect costs that are properly allocable to (1) real or tangible personal property the taxpayer produces, and (2) real property or personal property described in section 1221(a)(1) that the taxpayer acquires for resale. Taxpayers must allocate costs required to be capitalized under section 263A to property produced or acquired for resale during the taxable year using a cost allocation method described in the regulations. A taxpayer generally determines whether the cost of goods is included in cost of goods sold or in ending inventory using a cost flow assumption (for example, first-in, first-out or last-in, first-out). However, as explained later in this preamble, a taxpayer may use a simplified method to allocate costs required to be capitalized under section 263A between cost of goods sold and ending inventory.

Section 1.263A–1(e)(3)(i) defines indirect costs as all costs other than direct material costs and direct labor costs (in the case of property produced) or acquisition costs (in the case of property acquired for resale). Indirect costs are properly allocable to property produced or acquired for resale when the costs directly benefit or are incurred by reason of the performance of production or resale activities.

Section 1.263A–1(e)(3)(ii) provides a non-exclusive list of indirect costs that must be capitalized to the extent they are properly allocable to property produced or property acquired for resale. These costs include licensing and franchise costs incurred in securing the contractual right to use a trademark, corporate plan, manufacturing procedure, special recipe, or other similar right associated with property produced or property acquired for resale. Section 1.263A–1(e)(3)(ii)(U). Thus, royalty costs, including sales-based royalty costs, incurred in securing the contractual right to use a trademark, corporate plan, manufacturing procedure, special recipe, or other similar right associated with property produced or property acquired for resale, are indirect costs that are properly allocable to the property produced or acquired for resale to the extent the costs directly benefit or are incurred by reason of production or resale activities. *See*, for example, *Plastic Engineering & Technical Services, Inc. v. Commissioner*, TC Memo. 2001–324; *but see Robinson Knife Manufacturing Company, Inc. v. Commissioner*, No. 09–1496–ag, 2010 WL 986532 (2d Cir. March 19, 2010).

Section 1.263A–1(f) provides various "facts-and-circumstances" cost allocation methods that taxpayers may use to allocate direct and indirect costs to units of property produced or acquired for resale. The facts-and-circumstances methods allocate costs based on a relationship between the costs incurred and the units of property produced or acquired for resale.

In lieu of a facts-and-circumstances allocation method, taxpayers may use the simplified methods provided in §1.263A–2(b) (the simplified production method) or §1.263A–3(d) (the simplified resale method) to allocate costs to eligible property produced or eligible property acquired for resale. The simplified methods differ from facts-and-circumstances methods in that they allocate a pool of capitalizable costs (additional section 263A costs) between ending inventory and cost of goods sold using a defined ratio rather than allocating specific costs to particular goods. Additional section 263A costs are defined in §1.263A–1(d)(3) as the costs, other than interest, that were not capitalized under the taxpayer's method of accounting immediately prior to the effective date of section 263A, but that are required to be capitalized under section 263A. Under the simplified methods, taxpayers allocate additional section 263A costs between ending inventory and cost of goods sold using a formula that includes all additional section 263A costs incurred during the taxable year (including capitalizable sales-based royalties, if any).

Section 471 Inventory Rules Related to Sales-Based Vendor Allowances

Section 471 provides that inventories must be taken on the basis the Secretary prescribes as conforming to the best accounting practice in the trade or business and as most clearly reflecting income.

Section 1.471–2(c) permits merchants and manufacturers to value inventories at either (1) cost, or (2) cost or market, whichever is lower. Under §1.471–3(b), the cost of merchandise purchased by taxpayers in general is the invoice price less trade or other discounts.

Section 1.471–8 allows a retail merchant to use the retail inventory method to arrive at an approximate cost of goods in ending inventory. This cost is determined by multiplying the aggregate selling prices of the goods in ending inventory by the ratio of (1) the cost of the goods in beginning inventory plus the cost of goods purchased during the year, to (2) the retail selling prices of the goods in beginning inventory plus the retail selling prices of inventory purchased during the year, with proper adjustments to the selling prices for mark-ups and mark-downs. However, retail selling prices are not adjusted for temporary mark-downs. Rev. Rul. 79–115, 1979–1 C.B. 185, see §601.601(d)(2).

Explanation of Provisions

1. *Capitalization and Allocation of Sales-Based Royalties Under Section 263A*

The proposed regulations clarify that sales-based royalties, like other royalties, may be capitalizable to property a taxpayer produces or acquires for resale, but also provide that sales-based royalties required to be capitalized are allocable only to property that a taxpayer has sold.

In *Robinson Knife*, the Court of Appeals for the Second Circuit held that royalties for the right to use certain trademarks in manufacturing kitchen tools were not allocable to the property produced because the taxpayer's royalty payments were calculated as a percentage of net sales and were incurred only on the sale of the product. The court stated that the royalty costs were not incurred by reason of and did not directly benefit the performance of production activities, and therefore were not capitalizable under the section 263A regulations. The court reasoned that, although the licensing agreements may have directly benefited or been incurred by reason of production activities, the regulations did not require the capitalization of the royalty costs because the *costs themselves* did not directly benefit and were not incurred by reason of the performance of production activities.

The proposed regulations are consistent with the court's conclusion that, because of their relationship to sales, sales-based royalties inherently should not be capitalized to ending inventory. Because sales-based royalties are not incurred (within the meaning of section 461) until a unit of property is sold, sales-based royalties are more directly related to units of property sold during the taxable year than to unsold units. Therefore, the proposed regulations provide that capitalizable sales-based royalties are properly allocable to units of property produced or acquired for resale that are sold, or deemed sold, during the taxable year.

However, *Robinson Knife* misconstrued the nature of costs required to be capitalized. Royalties are the *costs* associated with the right to use intellectual property such as copyrighted works or patented inventions. If the use of those rights directly benefits or is incurred by reason of production activities, then the cost of securing those rights do as well. The fact that the amount of sales-based royalties is determined by reference to the number of units of property a taxpayer sells or is calculated as a percentage of revenue from the sale of inventory affects when a taxpayer incurs (within the meaning of section 461) that amount, but does not change an otherwise capitalizable production or resale cost into a non-capitalizable cost. Therefore, the proposed regulations also clarify that an indirect cost may directly benefit or be incurred by reason of the performance of production or resale activities even if the costs are incurred only upon the sale of inventory. Sales-based royalties, like other costs that directly benefit or are incurred by reason of production or resale activities, are capitalizable licensing and franchise costs within the meaning of §1.263A–1(e)(3)(ii)(U).

The proposed regulations achieve a similar result to that in *Robinson Knife*, but rather than determining that sales-based royalty costs are inherently non-capitalizable, the proposed regulations provide that otherwise capitalizable sales-based royalty costs are properly allocable to property sold during the taxable year.

2. *Sales-Based Vendor Allowances*

Under §1.471–3(b), the cost of merchandise a taxpayer purchases generally is the invoice price less trade or other discounts. A sales-based vendor allowance is an allowance, discount, or price rebate a taxpayer earns as a result of selling a vendor's merchandise, typically at a temporarily reduced price. The taxpayer's right to receive the sales-based vendor allowance depends on actual sales of the vendor's products. The amount received directly relates to the specific merchandise the taxpayer sells and properly is treated as a reduction in the cost of that merchandise. Therefore, the proposed regulations clarify that a sales-based vendor allowance is an adjustment to the cost of the merchandise sold or deemed sold under the taxpayer's cost flow assumption.

3. *Adjusting the Cost of Goods Sold and Goods in Ending Inventory*

Sales-based royalties and sales-based vendor allowances are properly allocable to property sold during the taxable year. Therefore, it is inappropriate to treat sales-based royalties and sales-based vendor allowances as adjustments to the cost of goods in ending inventory. The proposed regulations provide that sales-based royalties and sales-based vendor allowances are allocable to the units of property sold or deemed sold under the taxpayer's cost flow assumption and are not included in determining the inventory cost or value of goods on hand at the end of the taxable year under any inventory method.

Because the proposed regulations expressly allocate sales-based royalties and sales-based vendor allowances to property that has been sold or deemed sold, the proposed regulations revise the simplified production and simplified resale methods to remove costs such as capitalizable sales-based royalties and cost reductions such as sales-based vendor allowances, which are properly allocable to property that has been sold, from the formulas used to allocate additional section 263A costs to ending inventory. Taxpayers must continue to include capitalizable sales-based royalty costs in both the numerator and denominator of the production cost allocation ratio under §1.263A–1(h)(5) for purposes of determining capitalized mixed service costs under the simplified service cost method.

The proposed regulations do not modify the retail inventory method under §1.471–8 specifically. Section 1.471–3 and section 263A determine the cost of purchases for purposes of the retail inventory method, and the proposed regulations under §§1.263A–1 and 1.471–3 preclude a taxpayer from including sales-based royalties and sales-based vendor allowances in the cost of goods in the fraction used to determine the value of ending inventory under §1.471–8. Similarly, if the selling price markdown in a sales-based vendor allowance arrangement is temporary, the retail selling price component of the fraction is not adjusted.

Effective/Applicability Date

These regulations are proposed to apply for taxable years ending on or after the date the regulations are published as final regulations in the **Federal Register**.

Special Analyses

This notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. 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, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

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

A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is John Roman Faron of the Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.263A–1 also issued under 26 U.S.C. 263A.

Section 1.263A–2 also issued under 26 U.S.C. 263A.

Section 1.263A–3 also issued under 26 U.S.C. 263A. * * *

Section 1.471–3 also issued under 26 U.S.C. 471. * * *

Par. 2. Section 1.263A–0 is amended by adding new entries for §§1.263A–1(c)(5), 1.263A–1(k), 1.263A–1(l), 1.263A–2(b)(3)(ii)(C), 1.263A–2(e), 1.263A–2(f), 1.263A–3(d)(3)(i)(C)(*3*), and 1.263A–3(f) and revising the entry for §§1.263A–1(e)(3)(ii) in the table of contents to read as follows:

§1.263A–0 Outline of regulations under section 263A.

* * * * *

§1.263A–1 Uniform Capitalization of Costs.

* * * * *

(c) * * *

(5) Costs allocable only to sold property.

* * * * *

(e) * * *

(3) * * *

(ii) Types of indirect costs required to be capitalized.

* * * * *

(k) Change in method of accounting.

(1) In general.

(2) Scope limitations.

(3) Audit protection.

(4) Section 481(a) adjustment.

(5) Time for requesting change.

(l) Effective/applicability date.

§1.263A–2 Rules Relating to Property Produced by the Taxpayer.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) Costs allocable only to sold property.

* * * * *

(e) Change in method of accounting.

(1) In general.

(2) Scope limitations.

(3) Audit protection.

(4) Section 481(a) adjustment.

(5) Time for requesting change.

(f) Effective/applicability date.

§1.263A–3 Rules Relating to Property Acquired for Resale.

* * * * *

(d) * * *

(3) * * *

(i) * * *

(C) * * *

(*3*) Costs allocable only to sold property.

* * * * *

(f) Effective/applicability date.

* * * * *

Par. 3. Section 1.263A–1 is amended by:

1. Adding a new paragraph (c)(5).
2. Revising paragraph (e)(3)(i).
3. Revising the introductory text of paragraph (e)(3)(ii).
3. Redesignating paragraph (e)(3)(ii)(U) as paragraph (e)(3)(ii)(U)(*1*) and adding a sentence to the end of newly-designated paragraph (e)(3)(ii)(U)(*1*).
4. Adding a new paragraph (e)(3)(ii)(U)(*2*).
5. Revising paragraph (l).

The additions and revisions read as follows:

§1.263A–1 Uniform capitalization of costs.

* * * * *

(c) * * *

(5) *Costs allocable only to sold property*. Any cost that is required under this section, §1.263A–2, or §1.263A–3, to be allocated only to property sold, or deemed to be sold under the inventory cost flow assumption (such as first-in, first-out, last-in, first-out, or a specific-goods method) the taxpayer uses to identify the costs in ending inventory, must be included in cost of goods sold and is not included in determining the inventory cost or value of goods on hand at the end of the taxable year.

* * * * *

(e) * * *

(3) * * *

(i) *In general.* (A) Indirect costs are defined as all costs other than direct material costs and direct labor costs (in the case of property produced) or acquisition costs (in the case of property acquired for resale). Taxpayers subject to section 263A must capitalize all indirect costs properly allocable to property produced or property acquired for resale. Indirect costs are properly allocable to property produced or property acquired for resale when the costs directly benefit or are incurred by reason of the performance of production or resale activities. Indirect costs may directly benefit or be incurred by reason of the performance of production or resale activities even if the costs are calculated as a percentage of sales revenue from inventory or are incurred only upon the sale of inventory. Indirect costs may be allocable to both production and resale activities, as well as to other activities that are not subject to section 263A. Taxpayers must make a reasonable allocation of indirect costs between production, resale, and other activities.

(B) *Example*. The following example illustrates the provisions of this paragraph (e)(3)(i):

Example. (i) Taxpayer A manufactures tablecloths and other linens. A enters into a licensing agreement with Company L under which A may label its tablecloths with L's trademark if the tablecloths meet certain specified quality standards. In exchange for its right to use L's trademark, the licensing agreement requires A to pay L a royalty of $X for each tablecloth carrying L's trademark that A sells. The licensing agreement does not require A to pay L any minimum or lump-sum royalties.

(ii) The licensing agreement provides A with the right to use L's intellectual property, a trademark. The licensing agreement also requires A to conduct its production activities according to certain standards as a condition of exercising that right. Thus, A's right to use L's trademark under the licensing agreement is directly related to A's production of tablecloths. The royalties the licensing agreement requires A to pay for using L's trademark are the costs A incurs in exchange for these rights. Therefore, although A incurs royalty costs only when A sells a tablecloth carrying L's trademark, the royalty costs directly benefit production activities and are incurred by reason of production activities within the meaning of paragraph (e)(3)(i) of this section.

(ii) *Types of indirect costs required to be capitalized*. The following are types of indirect costs that must be capitalized to the extent they are properly allocable to property produced or property acquired for resale:

* * * * *

(U) *Licensing and franchise costs*. (*1*) * * * These costs also include fees, payments, and royalties otherwise described in this paragraph (e)(3)(ii)(U) that a taxpayer incurs (within the meaning of section 461) only upon the sale of property produced or acquired for resale.

(*2*) If a taxpayer incurs (within the meaning of section 461) a fee, payment, or royalty described in this paragraph (e)(3)(ii)(U) only upon the sale of property produced or acquired for resale and the cost is required to be capitalized under this paragraph (e)(3), the cost is allocable only to the property that has been sold or, for inventory property, deemed to be sold under the inventory cost flow assumption (such as first-in, first-out; last-in, first-out; or a specific-goods method) the taxpayer uses to identify the costs in ending inventory.

* * * * *

(l) *Effective/applicability date*. (1) Paragraphs (h)(2)(i)(D), (k), and (l) of this section apply for taxable years ending on or after August 2, 2005.

(2) Paragraphs (c)(5), (e)(3)(i), and (e)(3)(ii)(U) of this section apply for taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 4. Section 1.263A–2 is amended by:

1. Adding paragraphs (b)(3)(ii)(C) and (b)(4)(ii)(A)(*4*).
2. Revising paragraph (f).

The additions and revision read as follows:

§1.263A–2 Rules relating to property produced by the taxpayer.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) *Costs allocable only to sold property*. Additional section 263A costs incurred during the taxable year, as defined in paragraph (b)(3)(ii)(A)(*1*) of this section, section 471 costs incurred during the taxable year, as defined in paragraph (b)(3)(ii)(A)(*2*) of this section, and section 471 costs remaining on hand at year end, as defined in paragraph (b)(3)(ii)(B) of this section, do not include costs specifically described in §1.263A–1(e)(3)(ii) or cost reductions described in §1.471–3(e) as properly allocable only to property that has been sold or, for inventory property, deemed to be sold under the inventory cost flow assumption (such as first-in, first-out; last-in, first-out; or a specific-goods method) a taxpayer uses to identify the costs in ending inventory.

* * * * *

(4) * * *

(ii) * * *

(A) * * *

(*4*) Additional section 263A costs incurred during the test period, as defined in paragraph (b)(4)(ii)(A)(*2*) of this section and section 471 costs incurred during the test period, as defined in paragraph (b)(4)(ii)(A)(*3*) of this section, do not include costs specifically described in §1.263A–1(e)(3)(ii) or cost reductions described in §1.471–3(e) as properly allocable only to property that has been sold or, for inventory property, deemed to be sold under the inventory cost flow assumption (such as first-in, first-out; last-in, first-out; or a specific-goods method) a taxpayer uses to identify the costs in ending inventory.

* * * * *

(f) *Effective/applicability date*. (1) Paragraphs (b)(2)(i)(D), (e), and (f) of this section apply for taxable years ending on or after August 2, 2005.

(2) Paragraphs (b)(3)(ii)(C) and (b)(4)(ii)(A)(*4*) of this section apply for taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 5. In §1.263A–3, paragraphs (d)(3)(i)(C)(*3*), (d)(3)(i)(D)(*3*), (d)(3)(i)(E)(*3*), and (f) are added to read as follows:

§1.263A–3 Rules relating to property acquired for resale.

* * * * *

(d) * * *

(3) * * *

(i) * * *

(C) * * *

(*3*) *Costs allocable only to sold property*. Section 471 costs remaining on hand at year end, as defined in paragraph (d)(3)(i)(C)(*2*) of this section, do not include costs that are specifically described in §1.263A–1(e)(3)(ii) or cost reductions described in §1.471–3(e) as properly allocable only to property that has been sold or, for inventory property, deemed to be sold under the inventory cost flow assumption (such as first-in, first-out; last-in, first-out; or a specific-goods method) a taxpayer uses to identify the costs in ending inventory.

(D) * * *

(*3*) Current year's storage and handling costs, beginning inventory, and current year's purchases, as defined in paragraph (d)(3)(i)(D)(*2*) of this section, do not include costs that are specifically described in §1.263A–1(e)(3)(ii) or cost reductions described in §1.471–3(e) as properly allocable only to property that has been sold or, for inventory property, deemed to be sold under the inventory cost flow assumption (such as first-in, first-out; last-in, first-out; or a specific-goods method) a taxpayer uses to identify the costs in ending inventory.

(E) * * *

(*3*) Current year's purchasing costs and current year's purchases, as defined in paragraph (d)(3)(i)(E)(*2*) of this section, do not include costs that are specifically described in §1.263A–1(e)(3)(ii) or cost reductions described in §1.471–3(e) as properly allocable only to property that has been sold or, for inventory property, deemed to be sold under the inventory cost flow assumption (such as first-in, first-out; last-in, first-out; or a specific-goods method) a taxpayer uses to identify the costs in ending inventory.

* * * * *

(f) *Effective/applicability date*. Paragraphs (d)(3)(i)(C)(*3*), (d)(3)(i)(D)(*3*), and (d)(3)(i)(E)(*3*) of this section apply for taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 6. Section 1.471–3 is amended by:

1. Adding paragraphs (e) and (g).

2. Designating the undesignated text following paragraph (d) as paragraph (f).

The additions read as follows:

§1.471–3 Inventories at cost.

* * * * *

(e) The amount of an allowance, discount, or price rebate a taxpayer earns by selling specific merchandise is a reduction in the cost (as determined under paragraph (a), (b), or (d) of this section) of the merchandise sold or deemed to be sold under the inventory cost flow assumption (such as first-in, first-out; last-in, first-out; or a specific-goods method) the taxpayer uses to identify the costs in ending inventory. This amount decreases cost of goods sold and does not reduce the inventory cost or value of goods on hand at the end of the taxable year.

* * * * *

(g) *Effective/applicability date*. Paragraph (f) of this section applies to taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on December 16, 2010, 8:45 a.m., and published in the issue of the Federal Register for December 17, 2010, 75 F.R. 78940)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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