Internal Revenue
bulletin

Bulletin No. 2011-35
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# HIGHLIGHTS OF THIS ISSUE

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

## INCOME TAX

### T.D. 9539, page 179.

Final regulations under section 280C of the Code amend the regulations concerning the election to claim the reduced research credit. The final regulations simplify how taxpayers make the election and affect taxpayers that claim the reduced research credit.

### Notice 2011–66, page 184.

This notice provides guidance with regard to the time and manner in which the executor of the estate of a decedent who died in 2010 elects to have the provisions of section 1022 of the Code apply to determine a recipient's basis in certain property deemed acquired from the decedent. This notice also provides guidance with respect to generation-skipping transfers (GSTs) and transfers that have GST potential that occurred during 2010.

### Rev. Proc. 2011–41, page 188.

This procedure provides optional safe harbor guidance to the executor of the estate of a decedent who died in 2010 and elects to have the provisions of section 1022 of the Code apply to determine a recipient's basis in certain property acquired from the decedent.

## ESTATE TAX

### Notice 2011–66, page 184.

This notice provides guidance with regard to the time and manner in which the executor of the estate of a decedent who died in 2010 elects to have the provisions of section 1022 of the Code apply to determine a recipient's basis in certain property deemed acquired from the decedent. This notice also provides guidance with respect to generation-skipping transfers (GSTs) and transfers that have GST potential that occurred during 2010.

### Rev. Proc. 2011–41, page 188.

This procedure provides optional safe harbor guidance to the executor of the estate of a decedent who died in 2010 and elects to have the provisions of section 1022 of the Code apply to determine a recipient's basis in certain property acquired from the decedent.

## EXCISE TAX

### T.D. 9537, page 181.
### REG–122813–11, page 197.

Final, temporary, and proposed regulations under section 6071 of the Code provide guidance on the filing of Form 2290 (*Heavy Highway Vehicle Use Tax Return*) and payment of the associated highway use tax for the taxable period beginning July 1, 2011.

## ADMINISTRATIVE

### T.D. 9537, page 181.
### REG–122813–11, page 197.

Final, temporary, and proposed regulations under section 6071 of the Code provide guidance on the filing of Form 2290 (*Heavy Highway Vehicle Use Tax Return*) and payment of the associated highway use tax for the taxable period beginning July 1, 2011.

**(Continued on the next page)**

**Finding Lists begin on page ii.**
**Index for July through August begins on page iv.**

Department of the Treasury
Internal Revenue Service

**Announcement 2011–43, page 198.**
This document contains a correction to final regulations (T.D. 9475, 2010–4 I.R.B. 304) that provide guidance regarding the qualification of certain transactions as reorganizations described in section 368(a)(1)(D) of the Code where no stock and/or securities of the acquiring corporation is issued and distributed in the transaction.

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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.



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

## Section 280C.—Certain Expenses for Which Credits are Allowable

*26 CFR1.280C–4: Credit for increasing research activities.*

## T.D. 9539

## Election of Reduced Research Credit under Section 280C(c)(3)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend the regulations concerning the election to claim the reduced research credit. The final regulations simplify how taxpayers make the election and affect taxpayers that claim the reduced research credit.

DATES: *Effective Date:* These regulations are effective on July 27, 2011.

*Applicability Date:* For dates of applicability, see §1.280C–4(c).

FOR FURTHER INFORMATION CONTACT: David Selig, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background**

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) relating to the election for claiming the reduced research credit under section 280C(c)(3). On July 16, 2009, a notice of proposed rulemaking (REG–130200–08, 2009–31 I.R.B. 174) was published in the **Federal Register** (74 FR 34523). No public hearing was requested or held. Written and electronic comments responding to the notice of proposed rulemaking were received. After considering the comments received the proposed regulations are adopted as revised by this Treasury decision.

Section 280C(c)(1) provides that no deduction shall be allowed for that portion of the qualified research expenses (as defined in section 41(b)) or basic research expenses (as defined in section 41(e)(2)) otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 41(a).

Similarly, section 280C(c)(2) provides that if the amount of the credit determined for the taxable year under section 41(a)(1) exceeds the amount allowable as a deduction for such taxable year for qualified research expenses or basic research expenses (determined without regard to section 280C(c)(1)), the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

Section 280C(c)(3)(A) provides, in general, that in the case of any taxable year for which an election is made under section 280C(c)(3), sections 280C(c)(1) and (c)(2) shall not apply, and the amount of the credit under section 41(a) shall be the amount determined under section 280C(c)(3)(B). Under section 280C(c)(3)(B), the amount of credit for any taxable year shall be the amount equal to the excess of the amount of credit determined under section 41(a) without regard to section 280C(c)(3), over the product of the amount of credit determined under section 280C(c)(3)(B)(i), and the maximum rate of tax under section 11(b)(1).

Section 280C(c)(3)(C) provides that an election under section 280C(c)(3) for any taxable year shall be made not later than the time for filing the return of tax for such year (including extensions), shall be made on such return, and shall be made in such manner as the Secretary may prescribe. Section 1.280C–4(a) provides that the section 280C(c)(3) election to have the provisions of section 280C(c)(1) and (c)(2) not apply shall be made by claiming the reduced credit under section 41(a) determined by the method provided in section 280C(c)(3)(B) on an original return for the taxable year, filed at any time on or before the due date (including extensions) for filing the income tax return for such year.

Section 280C(c)(4) provides that section 280C(b)(3) shall apply for purposes of section 280C(c). Under section 280C(b)(3), in the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 41(f)(5)) or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 41(f)(1)(B)), section 280C(b) shall be applied under rules prescribed by the Secretary similar to the rules applicable under section 41(f)(1)(A) and (f)(1)(B).

Section 1.41–6(a)(1) provides that to determine the amount of research credit (if any) allowable to a trade or business that at the end of its taxable year is a member of a controlled group, a taxpayer must: (i) compute the group credit in the manner described in §1.41–6(b), and (ii) allocate the group credit among the members of the group in the manner described under §1.41–6(c). All members of the controlled group are required to use the same computation method, that is, the section 41(a)(1) method or the section 41(c)(5) alternative simplified research credit method, in computing the group credit for the credit year.

**Explanation and Summary of Comments**

These final regulations simplify the section 280C(c)(3) election to have the provisions of section 280C(c)(1) and (c)(2) not apply by requiring the election to be made on Form 6765, "*Credit for Increasing Research Activities*." The form must be filed with an original return for the taxable year filed on or before the due date (including extensions) for filing the income tax return for such year. An election, once made for any taxable year, is irrevocable for that taxable year.

These final regulations also provide that each member of a controlled group may make the election under section 280C(c)(3) after the group credit is computed and allocated under §§1.41–6(b)(1) and 1.41–6(c).

One commentator was concerned that the controlled group rules in the proposed regulations might cause administrative complexity for some members of a controlled group filing a consolidated return because each member would be required

to file a separate Form 6765 to make the election under section 280C(c)(3). Generally, the proposed regulations provided that each member of a controlled group of corporations (within the meaning of section 41(f)(5)), or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 41(f)(1)(B)), could make the election under section 280C(c)(3). In order to clarify and simplify the election procedure for members of consolidated groups, however, the final regulations add that only a common parent (within the meaning of §1.1502–77(a)(1)(i)) of a consolidated group may make the election under section 280C(c)(3) on behalf of the members of the consolidated group. An attachment to a Form 6765 filed by a common parent of a consolidated group adequately identifying the members for which an election under section 280C(c)(3) is made is generally sufficient to clearly indicate the intent of the common parent to make the election for those members.

Another commentator believed that some members of a controlled group may fail to make a timely election under section 280C(c)(3) because, at the time of filing the Form 6765 with the original return, no credit was reported by such members. The election under section 280C(c)(3) may be made whether or not a taxpayer claims any amount of credit on its original return. An example has been added to the final regulations showing that a taxpayer may make an election under section 280C(c)(3) on its original return without reporting any credit.

**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.

When an agency promulgates a final rule, the Regulatory Flexibility Act (5 U.S.C. chapter 6) requires the agency to "prepare a final regulatory flexibility analysis" with "a description of and an estimate of the number of small entities to which the rule will apply." See 5 U.S.C. 604(a). Section 605 of the Regulatory Flexibility Act provides an exception to this requirement if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The final rule affects individuals and small businesses engaged in research activities under section 41. The IRS has determined that the final rule will have an impact on a substantial number of small entities. However, the IRS also has determined that the impact on entities affected by the final rule will not be significant. This determination is based on the fact that the regulations would simplify the procedure for making the election for the reduced research credit under section 280C(c)(3)(C). Instead of requiring such an election to be made by claiming the reduced credit "on an original return," the regulations specify that the election is made by clearly indicating an intent to make the election on Form 6765, "*Credit for Increasing Research Activities*," which is attached to the return. This form requires only a minimal amount of time to complete and places no greater burden on the taxpayer than the current procedure. Accordingly, a final regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is David Selig, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the 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 1.280C–4 is revised to read as follows:

*§1.280C–4 Credit for increasing research activities.*

(a) *In general*. An election under section 280C(c)(3) to have the provisions of section 280C(c)(1) and (c)(2) not apply and elect the reduced research credit under section 280C(c)(3)(B) shall be made on Form 6765, "*Credit for Increasing Research Activities*" (or any successor form). In order for the election to be effective, the Form 6765 must clearly indicate the taxpayer's intent to make the section 280C(c)(3) election, and must be filed with an original return for the taxable year filed on or before the due date (including extensions) for filing the income tax return for such year, regardless of whether any research credits are claimed on the original return. An election, once made for any taxable year, is irrevocable for that taxable year.

(b) *Controlled groups of corporations; trades or businesses under common control*—(1) *In general*. A member of a controlled group of corporations (within the meaning of section 41(f)(5)), or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 41(f)(1)(B)), may make the election under section 280C(c)(3). However, only the common parent (within the meaning of §1.1502–77(a)(1)(i)) of a consolidated group may make the election on behalf of the members of a consolidated group. A member or trade or business shall make the election on Form 6765 and by the time prescribed in paragraph (a) of this section.

(2) *Example*. The following example illustrates an application of paragraph (b) of this section:

*Example*. A, B, and C, all of which are calendar year taxpayers, are members of a controlled group of corporations (within the meaning of section 41(f)(5)). A, B, and C each attach a statement to the 2009 Form 6765, "*Credit for Increasing Research Activities*," showing A and C had stand-alone entity credits (within the meaning of §1.41–6(c)(2)) that exceeded the group credit (within the meaning of §1.41–6(a)(3)(iv)). A and C report their allocated portions of the group credit (as determined under §1.41–6(c)) on the 2009 Form 6765 and B reports no research credit on the 2009 Form 6765. A and B, but not C, each make an election for the reduced credit on the 2009 Form 6765. In December 2010, A

determines that it understated its qualified research expenses in 2009 resulting in the group credit exceeding the sum of the stand-alone credits. On an amended 2009 Form 6765, A, B, and C each report their allocated portions of the group credit (including the excess group credit). B reports its credit as a regular credit under section 41(a) and reduces the credit under section 280C(c)(3)(B). C may not reduce its credit under section 280C(c)(3)(B) because C did not make an election for the reduced credit with its original return.

(c) *Effective/applicability date*. This section applies to taxable years ending on or after July 27, 2011.

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

Approved July 19, 2011.

Emily S. McMahon,
*Acting Assistant Secretary of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on July 26, 2011, 8:45 a.m., and published in the issue of the Federal Register for July 27, 2011, 76 F.R. 44800)

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# Section 6001.—Notice or Regulations Requiring Records, Statements, and Special Returns.

*26 CFR 41.6001–2: Proof of payments for State registration purposes.*

## T.D. 9537

## Highway Use Tax; Filing and Payment for Taxable Period Beginning July 1, 2011

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide guidance on the filing of Form 2290 ("*Heavy Highway Vehicle Use Tax Return*") and payment of the associated highway use tax for the taxable period beginning July 1, 2011. The regulations affect owners and operators of highway motor vehicles with a taxable gross weight of 55,000 pounds or more. The text of the temporary regulations (REG–122813–11) also serves as the text of the proposed regulations on this subject in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on July 20, 2011.

*Applicability Date:* For dates of applicability, see §§41.6001–2T(d), 41.6071(a)–1T(c)(3), and 41.6151(a)–1T(b).

FOR FURTHER INFORMATION CONTACT: Natalie Payne, (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background**

This document amends the Highway Use Tax Regulations (26 CFR Part 41) under section 4481 of the Internal Revenue Code (Code).

Section 4481 imposes a tax on the use in any taxable period of a highway motor vehicle with a taxable gross weight of 55,000 pounds or more. The person in whose name the vehicle is registered at the time of the first use must pay the tax. The rate of tax is based on the weight of the vehicle with a maximum of $550 per vehicle per taxable period (the standard amount).

Generally, a "taxable period" is the year that begins on July 1 and ends on the following June 30. For the taxable period beginning on July 1, 2011, however, section 4482(c)(4) of present law provides that the taxable period ends at the close of September 30, 2011. For this three month period, the tax rate is a reduced amount that is 25 percent of the tax rate for a 12-month period.

Section 41.6011(a)–1(a)(1) requires each person that is liable for the tax imposed by section 4481 to file a return for each taxable period and §41.6011(a)–1(b) provides that the return is Form 2290, "*Heavy Highway Vehicle Use Tax Return*."

The due date for filing Form 2290 is not prescribed by statute and section 6071 provides that when the Code does not set the time for filing a return, the Secretary is to prescribe such time by regulations. Under §41.6071(a)–1(a), Form 2290 generally must be filed by the last day of the month following the month in which a person becomes liable for tax. For most taxpayers, their first use of a vehicle in a taxable period occurs in July and thus their return is due by August 31.

Section 41.6001–2(b) provides, generally, that a State that receives an application to register a highway motor vehicle must receive from the applicant "proof of payment" of the tax imposed by section 4481(a). Section 41.6001–2(c) specifies that this proof of payment generally consists of a receipted Schedule 1 (Form 2290) that is returned by the IRS to a taxpayer that files Form 2290 and pays the amount of tax due with the return. The taxpayer generally must present proof of payment for the taxable period that includes the date on which the application for registration is filed, but in the case of an application filed in July, August, or September proof of payment for the preceding taxable period may be used.

The tax imposed under section 4481 will expire on September 30, 2011, unless Congress changes the law. Under existing regulations, the person liable for the highway use tax must file a Form 2290 by the last day of the month following the month in which the person becomes liable for the tax. Therefore, under current statutory and regulatory provisions, the person liable for the tax will be required to file a Form 2290 for taxable use during the period of July 1, 2011, through September 30, 2011 (the "2011 short taxable period"). Further, if Congress extends the tax past September 30, 2011, a person who filed Form 2290 for the 2011 short taxable period would have to file a second Form 2290 covering the period after September 30, 2011, through the earlier of the expiration date of the extension or June 30, 2012.

**Explanation of Provisions**

For purposes of efficient tax administration and alleviating taxpayers' potential administrative burden, the temporary regulations postpone the due date of Form 2290 for the 2011 short taxable period until November 30, 2011. If Congress does not extend the tax past September 30, 2011, taxpayers will file one Form 2290 and will pay the reduced amount for the 2011 short taxable period by November 30; if Congress does extend the tax past September 30, 2011, and substitutes a longer taxable period for the 2011 short taxable period, taxpayers who become liable for the highway use tax after June 30, 2011, and before November 1,

2011, also will file a Form 2290 for the period July 1, 2011 — June 30, 2012 (or the end of the new taxable period, if earlier), by November 30, 2011. In either case, most taxpayers will have to file only one return for the taxable period beginning July 1, 2011. But for the change made by the temporary regulations, most taxpayers would have to file two returns if Congress extends the tax past September 30.

Further, the temporary regulations state that taxpayers should file a Form 2290 no earlier than November 1, 2011, for taxable use during the 2011 short taxable period. The IRS will not provide a receipted Schedule 1 for a return and associated payment for the taxable period beginning July 1, 2011, before November 1, 2011. Because taxpayers will not be able to receive a receipted Schedule 1 for filing a Form 2290 and paying the tax for the taxable period beginning July 1, 2011, until November 1, 2011, the temporary regulations provide that the receipted Schedule 1 for the taxable period ending June 30, 2010, must be accepted by a State as a substitute proof of payment for registration applications filed during the period of July 1, 2011, through November 30, 2011.

Section 41.6001–2(b)(1) provides that a State may register a highway motor vehicle without proof of payment if the person registering the vehicle presents the original or a photocopy of a bill of sale (or other document evidencing transfer) indicating that the vehicle was purchased by the owner either as a new or used vehicle during the preceding 60 days before the date that the State receives the application for registration of such vehicle. Because taxpayers will not be able to obtain proof of payment during the period between July 1, 2011, and November 1, 2011, the temporary regulations provide that between July 1, 2011, and November 30, 2011, a State must register a highway motor vehicle without proof of payment if the person registering the vehicle presents the original or a photocopy of a bill of sale (or other document evidencing the sale) that demonstrates that the owner purchased the vehicle, either as a new or used vehicle, within 150 days of the date that the State receives the application for registration, and the vehicle has not been registered in any state since the purchase date.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 this regulation. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analysis section in the preamble to the cross-referenced notice of proposed rulemaking in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, this final and temporary 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 Natalie Payne, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

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**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 41 is amended as follows:

**PART 41—EXCISE TAX ON USE OF CERTAIN HIGHWAY MOTOR VEHICLES**

Paragraph 1. The authority citation for part 41 is amended to read in part as follows:

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

Section 41.6001–2T also issued under 26 U.S.C. 6001. * * *

Section 41.6071(a)–1T also issued under 26 U.S.C. 6071(a). * * *

Section 41.6151(a)–1T also issued under 26 U.S.C. 6151(a). * * *

Par. 2. Section 41.6001–2 is amended by:

1. Redesignating paragraph (b)(1) as paragraph (b)(1)(i) and adding a paragraph heading to newly designated paragraph (b)(1)(i).

2. Adding paragraph (b)(1)(ii).

3. Redesignating paragraph (b)(4) as paragraph (b)(4)(i) and adding a paragraph heading to newly designated paragraph (b)(4)(i).

4. Adding paragraph (b)(4)(ii).

5. Redesignating paragraph (c)(2) as paragraph (c)(2)(i), adding a paragraph heading to newly designated paragraph (c)(2)(i) and adding paragraph (c)(2)(ii).

The additions read as follows:

*§41.6001–2 Proof of payment for State registration purposes.*

* * * * *

(b) * * *

(1) * * *

(i) *Registration generally.* * * *

(ii) [Reserved]. For further guidance, see §41.6001–2T(b)(1)(ii).

* * * * *

(4) * * *

(i) *General rule.* * * *

(ii) [Reserved]. For further guidance, see §41.6001–2T(b)(4)(ii).

* * * * *

(c) * * *

(2) * * *

(i) *General rule.* * * *

(ii) [Reserved]. For further guidance, see §41.6001–2T(c)(2)(ii).

* * * * *

Par. 3. Section 41.6001–2T is added to read as follows:

*§41.6001–2T Proof of payment for State registration purposes (temporary).*

(a) [Reserved]. For further guidance, see §41.6001–2(a) .

(b)(1)(i) [Reserved]. For further guidance, see §41.6001–2(b)(1)(i).

(ii) *Special rule for registration after June 30, 2011, and before December 1, 2011.* Between July 1, 2011, and November 30, 2011, a State must register a highway motor vehicle without proof of payment if the person registering the vehicle presents the original or a photocopy of a bill of sale (or other document evidencing transfer) indicating that the vehicle was purchased by the owner either as a new or used vehicle during the preceding 150 days before the date that the State receives the application for registration of the vehicle,

and the vehicle has not been registered in any state subsequent to such date of purchase.

(b)(2) through (b)(4)(i) [Reserved]. For further guidance, see §41.6001–2(b)(2) through (b)(4)(i).

(ii) *Special rule for registration after June 30, 2011, and before December 1, 2011*. In the case of a highway motor vehicle subject to tax under section 4481(a) for which a State receives an application for registration during the months of July, August, September, October, or November of 2011, a State shall accept proof of payment for the taxable period of July 1, 2010, through June 30, 2011, to verify payment of the tax imposed by section 4481(a).

(c) introductory text through (c)(2)(i) [Reserved]. For further guidance, see §41.6001–2(c) through (c)(2)(i).

(ii) *Substitute proof of payment for the taxable period beginning July 1, 2011*. For purposes of this section and §41.6001–2, in the case of a highway motor vehicle for which a State receives an application for registration during the period of July 1, 2011, through November 30, 2011, a State shall accept as a substitute for proof of payment, proof of payment for the taxable period of July 1, 2010, through June 30, 2011.

(iii) *Cross reference*. For provisions relating to the use of proof of payment for the taxable period of July 1, 2010, through June 30, 2011, to verify payment of the tax imposed by section 4481(a), see §41.6001–2T(b)(4)(ii).

(d) *Effective/applicability date*. Paragraphs (b)(1)(ii), (b)(4)(ii), (c)(2)(ii) and (c)(2)(iii) of this section apply on and after July 20, 2011.

(e) *Expiration date*. The applicability of this section expires on or before July 15, 2014.

Par. 4. Section 41.6071(a)–1 is amended as follows:

1. In paragraph (a) introductory text, the phrase "Except as provided in paragraph (b) of this section" is removed and "Except as provided in paragraph (b) or paragraph (c) of this section" is added in its place.

2. Add paragraph (c).

The addition reads as follows:

*§41.6071(a)–1 Time for filing returns.*

* * * * *

(c) [Reserved]. For further guidance, see §41.6071(a)–1T(c) through (c)(3).

Par. 5. Section 41.6071(a)–1T is added to read as follows:

*§41.6071(a)–1T Time for filing returns (temporary).*

(a) through (b) [Reserved]. For further guidance, see §41.6071(a)–1(a) through (b).

(c) *Special rule for highway motor vehicles for which a taxable use occurs during the period July 1, 2011, through September 30, 2011*—(1) *Date for filing returns*. In the case of a highway motor vehicle for which a taxable use occurs during the period July 1, 2011, through September 30, 2011, the person liable for the tax must file a return described in §41.6011(a)–1 no later than November 30, 2011. The return should be filed no earlier than November 1, 2011. If the return is filed and payment is submitted before November 1, 2011, the IRS will not provide a receipted Schedule 1 (Form 2290, "*Heavy Highway Vehicle Use Tax Return*") as proof of payment until after November 1, 2011, and will provide such receipted Schedule 1 only if the full amount of the tax for the 2011 taxable period (determined under the law in effect as of November 1, 2011) has been paid.

(2) *Cross reference*. For provisions relating to time and place for paying the tax imposed under section 4481, see §41.6151(a)–1.

(3) *Effective/applicability date*. This paragraph (c) applies on and after July 20, 2011.

(4) *Expiration date*. The applicability of this section expires on or before July 15, 2014.

Par. 6. Section 41.6151(a)–1 is revised to read as follows:

*§41.6151(a)–1 Time and place for paying tax.*

[Reserved]. For further guidance, see §41.6071(a)–1T(a) and (b).

Par. 7. Section 41.6151(a)–1T is added to read as follows:

*§41.6151(a)–1T Time and place for paying tax (temporary).*

(a) *In general*. The tax must be paid at the time prescribed in §41.6071(a)–1 (or §41.6071(a)–1T, as appropriate) for filing the return and at the place prescribed in §41.6091–1 for filing the return.

(b) *Effective/applicability date*. This section applies on and after July 20, 2011.

(c) *Expiration date*. The applicability of this section expires on or before July 15, 2014.

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

Approved July 13, 2011.

Emily S. McMahon,
*Acting Assistant Secretary of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on July 15, 2011, 4:15 p.m., and published in the issue of the Federal Register for July 20, 2011, 76 F.R. 43121)

# Part III. Administrative, Procedural, and Miscellaneous

## Method for Making Election to Apply Carryover Basis Treatment under Section 1022 to the Estates of Decedents who Died in 2010 and Rules Applicable to Inter Vivos and Testamentary Generation-Skipping Transfers in 2010

## Notice 2011–66

**PURPOSE**

This notice provides guidance with regard to the time and manner in which the executor of the estate of a decedent who died in 2010 elects, pursuant to section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111–312 (124 Stat. 3296) (TRUIRJCA), to have the estate tax not apply and to have the carryover basis rules in section 1022 apply to property transferred as a result of the decedent's death. This notice also addresses how a donor may elect out of the automatic allocation of generation-skipping transfer (GST) tax exemption to direct skips occurring during 2010. It also clarifies the due dates for returns for the taxable year ending December 31, 2010, that report a generation-skipping transfer, that allocate GST exemption, or that opt out of the automatic allocation of GST exemption. In addition, the notice discusses the application of chapter 13 (the GST tax) to testamentary transfers during 2010. Finally, this notice addresses certain other collateral issues arising from the determination of basis under section 1022.

This notice applies to executors of the estates of decedents who died in 2010 and to recipients of property acquired from such decedents (within the meaning of section 1022(e)) (hereinafter, *acquired from the decedent*), if the executors make the election under section 301(c) of TRUIRJCA. This notice also applies to donors who made a gift during 2010 that is a generation-skipping transfer or an indirect gift for purposes of the GST tax. See Revenue Procedure 2011–41 for a safe harbor with regard to the interpretation and application of section 1022.

**BACKGROUND**

Subtitle A of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. 107–16 (EGTRRA) enacted section 2210, which made chapter 11 (the estate tax) inapplicable to the estate of any decedent who died in 2010 and chapter 13 (the GST tax) inapplicable to generation-skipping transfers made in 2010. On December 17, 2010, TRUIRJCA became law, and section 301(a) of TRUIRJCA retroactively reinstated the estate and GST taxes. However, section 301(c) of TRUIRJCA allows the executor of the estate of a decedent who died in 2010 to elect to apply the Internal Revenue Code (IRC) as though section 301(a) of TRUIRJCA did not apply with respect to chapter 11 and with respect to property acquired or passing from the decedent (within the meaning of section 1014(b)). Thus, section 301(c) of TRUIRJCA allows the executor of the estate of a decedent who died in 2010 to elect not to have the provisions of chapter 11 apply to the decedent's estate, but rather, to have the provisions of section 1022 apply (Section 1022 Election).

Even though an executor may elect out of the estate tax under TRUIRJCA, the provisions of chapter 13 (GST tax) nonetheless continue to apply. Section 302(c) of TRUIRJCA, however, provides that the applicable tax rate for each GST occurring during 2010 is zero. Section 301(d)(2) provides that, in the case of any generation-skipping transfer made after December 31, 2009, and before December 17, 2010, the due date for filing a return required under section 2662 of the IRC (including any election required to be made on such return) shall not be earlier than September 17, 2011.

TRUIRJCA also retroactively repealed section 2511(c), which treated each transfer in trust during 2010 as a gift unless the trust was treated as wholly owned by the donor or the donor's spouse. Because of this retroactive repeal, this section does not apply even if a Section 1022 Election is made.

**GUIDANCE**

**I Section 1022 Election and Filing Requirements.**

**A. Section 1022 Election.**

The executor of the estate of a decedent who died in 2010 may make the Section 1022 Election by filing a Form 8939, *Allocation of Increase in Basis for Property Acquired From a Decedent*, on or before November 15, 2011. Once made, the election is irrevocable except as provided in section I.D.1 or D.2 of this notice. Prior filings purporting to make the Section 1022 Election must be replaced with a timely filed Form 8939.

If, for the same decedent, the Internal Revenue Service (IRS) receives a Form 8939 and either a Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, or a Form 706–NA, *United States Estate (and Generation-Skipping Transfer) Tax Return Estate of Nonresident not a Citizen of the United States*, the IRS will issue a letter to each person who filed such a form. The letter will include the name and address of each person who filed a Form 706 (or Form 706–NA) or a Form 8939 with respect to the decedent, and will explain that each of those persons must collectively sign and file either a restated Form 706 (or Form 706–NA) or Form 8939 on or before 90 days from the date the IRS mails such letters. If no restated Form 706 (or Form 706–NA) or Form 8939, signed by each person who previously filed any such form, is filed within that 90-day period, the IRS will determine whether the executor has made a Section 1022 Election for the decedent's estate or whether the decedent's estate is subject to chapter 11. In making this determination, the IRS will consider all relevant facts and circumstances disclosed to the IRS, including without limitation the relative total fair market values of the decedent's property in the possession of the executors and the nature and significance of the economic impact of the Section 1022 Election (or its loss) on the beneficial owners of the property held by each executor. Some factors may be more relevant, and may be accorded more weight, than others for any particular estate.

**B. Method to Allocate Basis.**

The executor must allocate Basis Increase, as defined in section 4.02 of Revenue Procedure 2011–41, on a timely filed Form 8939. For purposes of this section, references to the term "executor" shall be construed in accordance with section 2203 as if that section was applicable. Accordingly, if an executor has been appointed, has qualified, and is acting for a decedent's estate within the United States, the IRS generally will only accept Forms 8939 filed by such executor.

If an executor has not been appointed, any person in actual or constructive possession of property acquired from the decedent may file a Form 8939 for the property he or she actually or constructively possesses. If the IRS receives multiple Forms 8939 that collectively purport to allocate Basis Increase in an amount greater than the amount of Basis Increase available to the estate, the IRS will issue a letter to each person who filed such a form. The letter will include the name and address of each other person who filed a Form 8939 with respect to the decedent, and will explain that each of those persons must collectively sign and file a single, restated Form 8939 allocating available Basis Increase in order to make the Section 1022 Election. The restated Form 8939 must be filed on or before 90 days from the date the IRS mails such letters. If no restated Form 8939, signed by each such person who previously submitted a Form 8939, is filed within that 90-day period, the IRS will allocate the available Basis Increase as the IRS, in its discretion, may determine. In making this determination and exercising its discretion, the IRS will consider all relevant facts and circumstances disclosed to the IRS. That allocation might be made on a *pro-rata* basis, based on the amount of unrecognized appreciation in the property owned by the decedent (within the meaning of section 1022(d)) (hereinafter, *owned by the decedent*) at death and acquired from the decedent that was reported on the timely filed Forms 8939, or in any other manner deemed appropriate for the particular decedent's estate by the IRS in the exercise of its discretion.

The recipient's basis in a particular property (including the amount of Basis Increase allocated to that property) is subject to adjustment upon the examination by the IRS of any tax return reporting a value dependent upon the property's basis (for example, the property's depreciation, sale, or other disposition that triggers gain or loss on the property, or otherwise).

**C. Reporting Requirements.**

If the executor makes the Section 1022 Election, the executor must report and value on Form 8939 all property (excluding cash and property that constitutes the right to receive an item of income in respect of a decedent under section 691 (IRD)) acquired from the decedent. Section 6018(b)(1). In addition, the executor also must report all appreciated property acquired from the decedent, valued as of the decedent's date of death, that was required to be included on the donor's Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*, if such property was acquired by the decedent by gift or by *inter vivos* transfer for less than adequate and full consideration in money or money's worth during the 3-year period ending on the date of the decedent's death. Section 6018(b)(2). This does not include property transferred to the decedent by the decedent's spouse, who had not acquired the property in whole or in part by gift or by *inter vivos* transfer for less than adequate and full consideration in money or money's worth during that same 3-year period.

In the case of a deceased nonresident who is not a citizen of the United States, the property to be reported is limited to tangible property situated in the United States that is acquired from the decedent and any other property acquired from the decedent by a United States person. Section 6018 describes the information that must be provided on Form 8939.

In addition to the information as provided in this paragraph C, the executor must include with the Form 8939 any other information and supporting documentation as identified in the instructions to the Form 8939 or in any Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*)).

Within 30 days after the executor files a timely filed Form 8939, the executor (or each executor filing such a form) must provide a statement to each recipient acquiring property reported on that form, setting forth the information required under section 6018(c), regardless of whether the executor allocates Basis Increase to such property on the form. Section 6018(e). If an adjustment is made to the basis of property reported on a Form 8939, the executor must provide updated statements to each recipient of property affected by that adjustment within 30 days after making the adjustment or receiving notice of the adjustment from the IRS, whichever is applicable.

**D. Time for Filing Return.**

**1. In General.**

Form 8939 is due November 15, 2011. A Form 8939 filed prior to that date may be amended or revoked, but only on a subsequent Form 8939 filed on or before November 15, 2011. The Form 8939 that is timely filed by an executor is the last Form 8939 filed by that executor on or before November 15, 2011. No executor's Form 8939 will have any effect on any Form 8939 filed by a different executor. The IRS will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 or an amended Form 8939 filed after the due date, except as provided in section I.A or B (in the event of conflicting filings) or in section I.D.2 (regarding relief provisions) of this notice. Thus, a taxpayer may not file an estate tax return as well as a conditional Form 8939 that would take effect only if an estate tax audit results in an increase in the gross estate above the applicable exclusion amount. Notwithstanding the previous sentences, however, for persons qualifying under section 7508 or 7508A, the due date for filing a Form 8939 is postponed as provided in those sections. Any executor filing a Form 8939 after November 15, 2011, pursuant to section 7508 or 7508A should write "Filed Pursuant to Section 7508" or "Filed Pursuant to Section 7508A", as applicable, on the top of the form. The failure to write these notations at the top of the Form 8939, however, does not adversely impact the extension granted under section 7508 or 7508A. Furthermore, for decedents qualifying for relief under section 692, an executor must file a Form 8939 to make the Section 1022 Election.

**2. Relief Provisions.**

Four types of relief from the requirements of section I.D.1 of this notice are available. First, an amended Form 8939 may be filed after the due date of that form for the sole purpose of allocating Spousal Property Basis Increase, as that term is defined in section 1022(c)(2) and section 4.02(3) of Revenue Procedure 2011–41, among the property eligible to receive an allocation of that basis, provided that each of the two following requirements is satisfied. The first requirement is that the Form 8939 must have been timely filed and was complete when filed except for the allocation of the full amount of the Spousal Property Basis Increase to the eligible property reported on that Form 8939. The second requirement is that each amended Form 8939 must be filed no more than 90 days after the date of the distribution of the qualified spousal property to which Spousal Property Basis Increase is allocated on that amended Form 8939.

Second, provided an executor timely filed a Form 8939, the executor may file an amended Form 8939 under the provisions of § 301.9100–2(b) on or before May 15, 2012, for any purpose except to make or revoke a Section 1022 Election. The executor must write "Filed Pursuant to Section 301.9100–2" on the top of the amended Form 8939.

Third, an executor may apply for relief to supplement a timely filed Form 8939 under § 301.9100–3. A request for relief to supplement a timely filed Form 8939 is limited to an extension of time to allocate any Basis Increase that has not previously been validly allocated, and such relief, if appropriate, will be granted only if: (1) after filing the Form 8939, the executor discovers additional property to which remaining Basis Increase could be allocated; and/or (2) the fair market value of property reported on the Form 8939 is adjusted as the result of an IRS examination or inquiry. Relief will not be granted to reduce an allocation of Basis Increase made on a timely filed Form 8939.

Fourth, an executor may apply for relief under § 301.9100–3 in the form of an extension of the time in which to file the Form 8939 (thus, making the Section 1022 Election and the allocation of Basis Increase), which relief may be granted if the requirements of § 301.9100–3 are satisfied. Taxpayers should be aware, however, that, in this context, the amount of time that has elapsed since the decedent's death may constitute a lack of reasonableness and good faith and/or prejudice to the interests of the government (for example, the use of hindsight to achieve a more favorable tax result and/or the lack of records available to establish what property was or was not owned by the decedent at death), which would prevent the grant of the requested relief.

**II GST Tax in 2010.**

**A. With Respect to Decedents Who Died in 2010**

The GST tax was retroactively reinstated by TRUIRJCA and applies to the estates of all decedents who died after December 31, 2009, regardless of whether a Section 1022 Election is made. The GST tax is computed by multiplying the taxable amount by the applicable rate. Section 2602. Section 2641(a) defines the applicable rate for this purpose as the maximum federal estate tax rate applicable to the estate of a decedent dying at the time of the transfer, multiplied by the inclusion ratio with respect to that transfer. Section 302(c) of TRUIRJCA provides that, for each GST occurring during 2010, the applicable rate under section 2641(a) is zero. This provision is interpreted to mean that the maximum federal estate tax rate for purposes of computing the GST tax on such a transfer is deemed to be zero which, when multiplied by any inclusion ratio, will result in an applicable rate of zero. As under the law applicable to GSTs occurring prior to 2010, the only way to achieve a zero inclusion ratio for the transfer is to make a timely allocation of GST exemption to the transfer.

If the executor of a decedent who died in 2010 makes the Section 1022 Election, the executor allocates that decedent's available GST exemption by attaching the Schedule R of Form 8939 to the Form 8939 for that decedent's estate. If the Form 8939 is timely filed, this allocation will be considered a timely allocation of the decedent's GST exemption under section 2632.

**B. *Inter Vivos* Direct Skips**

In the case of *inter vivos* direct skips that occurred in 2010, if the donor wishes to pay GST tax at the rate of zero percent and therefore does not wish to have any GST exemption allocated to that transfer, the donor may elect out of the automatic allocation of GST exemption to that direct skip in either of two ways. First, the donor affirmatively may elect out of the automatic allocation by describing, on a timely filed Form 709, both the transfer and the extent to which the automatic allocation is not to apply. See section 26.2632–1(b)(1)(i). Alternatively, that same regulation also provides that, ". . . a timely-filed Form 709 accompanied by payment of the GST tax (as shown on the return with respect to the direct skip) is sufficient to prevent an automatic allocation of GST exemption with respect to the transferred property." Because it is clear that a 2010 transfer not in trust to a skip person is a direct skip to which the donor would never want to allocate GST exemption, the IRS will interpret the reporting of an *inter vivos* direct skip not in trust occurring in 2010 on a timely filed Form 709 as constituting the payment of tax (at the rate of zero percent) and therefore as an election out of the automatic allocation of GST exemption to that direct skip. This interpretation also applies to a direct skip not in trust occurring at the close of an estate tax inclusion period (ETIP) in 2010 other than by reason of the donor's death. However, a donor may or may not want to allocate GST exemption to a 2010 direct skip made to a trust. Therefore, this interpretation will not apply to any transfer in trust that is a direct skip or that occurs at the end of an ETIP. In addition, because this interpretation only applies to *inter vivos* direct skips, it will also not apply to any direct skip, or to the close of an ETIP, by reason of the donor's death. Section 26.2632–1(c)(4). The rules regarding the automatic allocation of GST exemption will apply to transfers described in the preceding sentence unless the transferor affirmatively elects to have those rules not apply.

**C. Filing Deadlines**

Section 2611(a) defines a GST transfer as a direct skip, a taxable distribution, or a taxable termination. An indirect skip, as defined in section 2632(c)(3), is not a GST transfer. Section 2631 provides that each individual is allowed a GST exemption amount which may be allocated to any property with respect to which such individual is the transferor. Under § 26.2632–1(b)(3) and (4), an election to treat a trust as a GST trust or to allocate GST exemption to any *inter vivos* transfer other than a direct skip, is made on a timely filed Form 709. Section 2632(b)(1) and (c)(1) provide that, if any individual makes a direct or indirect skip during life, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. Sections 2632(b)(3) and (c)(5) and § 26.2632–1(b)(1)(i) and (b)(2)(ii) provide that an individual may prevent the automatic allocation of GST exemption by so providing on a timely filed Form 709.

Section 301(d)(2) of TRUIRJCA extends the time for filing any return required under section 2662 (including any election required to be made on such return) to report a GST transfer made after December 31, 2009, and before December 17, 2010, to September 17, 2011. Accordingly, the due date for filing a return reporting a direct skip, a taxable distribution, or a taxable termination (including any election required to be made on such return) that occurred on or after January 1, 2010, through December 16, 2010, is September 19, 2011, including extensions (because September 17, 2011, falls on a Saturday), except in the case of a Schedule R attached to Form 8939, which is due on or before November 15, 2011.

However, the language of Section 301(d)(2) of TRUIRJCA does not extend the due date of all gift and GST returns for 2010. Specifically, to the extent a return relates to an indirect skip, or to a post-December 16, 2010, direct skip, the due date of the return is not extended. Thus, the due date for filing a Form 709 that does not report a GST transfer or that reports a GST transfer (or any election pertaining to such transfer) that occurs on or after December 17, 2010, through December 31, 2010, was April 18, 2011, including extensions. In addition, the due date for filing a Form 709 to elect to treat a trust as a GST trust or to allocate GST exemption to a transfer occurring during 2010 under § 26.2632–1(b)(3) or (4) was April 18, 2011, including extensions. However, if a donor timely filed Form 709 for the taxable year ending December 31, 2010, but failed to allocate GST exemption to a transfer occurring during such year, see § 301.9100–2 for possible relief.

**D. Application of Chapter 13 to Testamentary Transfers During 2010**

For purposes of chapter 13, the Treasury Department and IRS will construe and apply any reference to chapter 11 without regard to whether the executor of a decedent who died in 2010 made a Section 1022 Election. For example, references to chapter 11 in §§ 2612(c)(1), 2642(b)(2)(A), 2642(f), 2651(e)(1)(B), and 2661(2) will be construed as if the decedent was subject to chapter 11 even if the decedent's executor made the Section 1022 Election.

**III Transfer Certificates Under § 20.6325–1**

Section 6324(a)(1) generally provides that, unless the estate tax is paid in full, a lien is imposed upon the gross estate of a decedent for 10 years from the date of death for any unpaid estate tax liability. Section 6324(a)(2) generally provides that, if the estate tax is not paid when due, then (1) any transferee, trustee, person in possession of property, or person who receives property from the gross estate as described in sections 2034 to 2042 shall be personally liable for the estate tax to the extent of the value of that property on the decedent's date of death and (2) any part of any property included in the gross estate that is transferred by such person shall be divested of the lien and a like lien shall attach to all of the property of such person. Section 6325(c) and the regulations thereunder provide procedures for issuing a certificate of discharge of lien for any property subject to any lien imposed by section 6324.

In the case of a transfer agent holding property registered in the name of a nonresident decedent who is not a citizen of the United States, § 20.6325–1(a) provides that the IRS may issue a transfer certificate to permit the transfer of property without liability for such decedent's estate tax. Specifically—

> [a] transfer certificate is a certificate permitting the transfer of property of a nonresident decedent without liability. . . . Corporations, transfer agents of domestic corporations, transfer agents of foreign corporations (except as to shares held in the name of a nonresident decedent not a citizen of the United States), banks, trust companies, or other custodians in actual or constructive possession of property, of such a decedent can insure avoidance of liability for taxes and penalties only by demanding and receiving transfer certificates before transfer of property of nonresident decedents.

Thus, transfer certificates requested with respect to property of a nonresident decedent who is not a citizen of the United States have been issued by the IRS when the Commissioner has been satisfied that the "tax imposed upon the estate, if any, has been fully discharged or provided for." Section 20.6325–1(c).

Concerns have been raised as to whether it is still necessary to obtain such transfer certificates prior to transferring property owned by nonresident decedents who are not citizens of the United States, who died in 2010, and whose executors make the Section 1022 Election. This notice clarifies that a transfer certificate is not required, and the IRS will not issue transfer certificates, with respect to the property of a nonresident decedent who is not a citizen of the United States, who died in 2010, and whose executor makes the Section 1022 Election.

**IV Election to Treat a Trust as Part of an Estate Under Section 645**

Under section 645, if the executor (if any) of an estate and the trustee of a qualified revocable trust so elect, the trust will be treated as part of the estate (and not as a separate trust) for income tax purposes for all taxable years of the estate ending after the date of the decedent's death and before the applicable date. Section 645(b)(2) defines "applicable date" as, "(A) if no return of tax imposed by chapter 11 is required to be filed, the date which is 2 years after

the date of the decedent's death, and (B) if such a return is required to be filed, the date which is 6 months after the date of the final determination of the liability for tax imposed by chapter 11." If an executor makes the Section 1022 Election, no return of tax imposed by chapter 11 is required to be filed. Accordingly, if an executor makes the Section 1022 Election, section 645(b)(2)(A) applies and the applicable date is the date that is 2 years after the date of the decedent's death.

**REQUEST FOR COMMENTS**

The Treasury Department and the IRS invite public comments on the guidance provided in this notice. All materials submitted will be available for public inspection and copying.

Comments may be submitted to Internal Revenue Service, CC:PA:LPD:PR (Notice 2011–66), Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to the Couriers Desk at 1111 Constitution Avenue, NW, Washington, DC 20224, Attn:CC:PA:LPD:PR (Notice 2011–66), Room 5203. Submissions may also be sent electronically via the internet to the following email address: *Notice.comments@irscounsel.treas.gov*. Include the notice number (Notice 2011–66) in the subject line.

**EFFECTIVE DATE**

This notice is applicable to executors of the estates of decedents who died in 2010, and to persons acquiring property from such a decedent whose executor makes the Section 1022 Election. This notice is also applicable to donors who made a GST transfer or an indirect gift for purposes of the GST tax during 2010. The Treasury Department and the IRS intend to issue regulations to confirm the guidance set forth in this notice.

**DRAFTING INFORMATION**

The principal authors of this notice are Laura Urich Daly, Theresa Melchiorre, and Mayer Samuels of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Laura Urich Daly, Theresa Melchiorre, or Mayer Samuels at (202) 622–3090 (not a toll-free call).

**PAPERWORK REDUCTION ACT**

The collection of information contained in this notice has been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) and OMB approval is pending. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The first, second, and third collection of information requirements, as required by section 6018(c) and (e), are in section I.C. of this notice. The collection of information relates to the requirement that the executor provide a statement to each recipient acquiring property reported on Form 8939. Section I.C of this notice also requires the executor to provide updated statements to each recipient of property affected by any adjustment made to Form 8939. Finally, section I.C of this notice requires the executor to provide any other information and supporting documentation as identified in the instructions to the Form 8939 or in any Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*)). This collection of information is necessary for the proper performance of the function of the IRS in the collection of income tax when the property is later disposed of by the recipient or other holder of the property.

It is anticipated that the decedent's executor will complete and attach to Form 8939 schedules showing property received by each recipient acquiring property from a decedent. To meet this collection of information requirement, the executor is required to send a copy of the schedule relating to property received by that particular recipient to such recipient and to send an updated schedule to each recipient in the event the information on the schedule changes. The decedent's executor will also have to provide any other information and supporting documentation as identified in the instructions to the Form 8939 or in any Internal Revenue Bulletin. We estimate that approximately 7,000 estates of decedents who died in 2010 will file Form 8939 and that it will take an executor approximately 10 hours to comply with these requirements. The total reporting burden is estimated to be 70,000 hours.

The fourth collection of information requirement in this notice is in section II.A, as provided in Treasury Regulation § 26.2632–1(d)(1), and relates to allocating the decedent's unused GST exemption. This information collection is necessary for the proper performance of the function of the IRS in the collection of GST tax when there is a taxable termination or taxable distribution. We estimate that 6,000 executors of estates of decedents who died in 2010 will allocate the decedent's unused GST exemption on a Schedule R for Form 8939 attached to Form 8939 and that it will take each executor approximately 3 hours to prepare the documentation. The total reporting burden is estimated to be 18,000 hours.

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

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*26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct liability*
*(Also Part 1 §§1022, 172, 165, 469, 1212, 1040, 684, 6018, 20.6325–1)*

## Rev. Proc. 2011–41

**SECTION 1. PURPOSE**

This revenue procedure provides optional safe harbor guidance under section 1022 of the Internal Revenue Code (Code), enacted by section 542 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), P.L. 107–16 (115 Stat. 76–81). Section 1022 determines a recipient's basis in property acquired from the decedent (within the meaning of section 1022(e)) who died in 2010 if the decedent's executor elects to have section 1022 apply. Section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111–312 (124 Stat. 3296) (TRUIRJCA), allows such an executor to elect to have the estate tax not apply and to have the carryover basis rules in section 1022 apply to

property transferred as a result of the decedent's death (Section 1022 Election). This revenue procedure does not address the time or manner in which such an executor makes the Section 1022 Election or allocates generation-skipping transfer (GST) exemption to transfers occurring as a result of such decedent's death. Instead, taxpayers must see Notice 2011–66 for such guidance.

## SECTION 2. BACKGROUND

Subtitle A of title V of EGTRRA enacted section 2210, which made chapter 11 (the estate tax) inapplicable to the estate of any decedent who died in 2010 and chapter 13 (the GST tax) inapplicable to generation-skipping transfers made in 2010. On December 17, 2010, TRUIRJCA became law, and section 301(a) of TRUIRJCA retroactively reinstated the estate and GST taxes. However, section 301(c) of TRUIRJCA allows the executor of the estate of a decedent who died in 2010 to elect to apply the Code as though section 301(a) of TRUIRJCA did not apply with respect to chapter 11 and with respect to property acquired or passing from a decedent (within the meaning of section 1014(b)). Thus, section 301(c) of TRUIRJCA allows the executor of the estate of a decedent who died in 2010 to elect not to have the provisions of chapter 11 apply to the decedent's estate, but rather, to have the provisions of section 1022 apply.

## SECTION 3. SCOPE

The safe harbor procedures of this revenue procedure apply to executors of the estates of decedents who died in 2010 and to recipients of property acquired from such decedents, if the executors make the Section 1022 Election. If the executor of the estate of the decedent who died in 2010 makes the Section 1022 Election and follows the applicable provisions of section 4 of this revenue procedure and takes no return position contrary to any provisions of section 4, the Internal Revenue Service (IRS) will not challenge the taxpayer's ability to rely on the provisions of section 4 either on the Form 8939, *Allocation of Increase in Basis for Property Acquired From a Decedent*, or any other return of tax.

## SECTION 4. APPLICATION

.01 *Application of Section 1022*.

(1) *In General*. Section 1022 applies to the estate of a decedent who died in 2010 only if the executor, as defined in section 2203, makes the Section 1022 Election as described in Notice 2011–66. Section 1022(a)(1) generally provides that property acquired from the decedent (within the meaning of section 1022(e)) (hereinafter, *acquired from the decedent*) is treated as having been transferred by gift. If the decedent's adjusted basis is less than or equal to the property's fair market value (FMV) determined as of the decedent's date of death, the recipient's basis is the adjusted basis of the decedent. Section 1022(a)(2)(A). If the decedent's adjusted basis is greater than that FMV, the recipient's basis is limited to that FMV. Section 1022(a)(2)(B).

If the executor of the estate of a decedent who died in 2010 makes the Section 1022 Election, section 1022 applies to determine a recipient's basis in all property acquired from that decedent, regardless of the year in which the property is sold or distributed. Accordingly, if property is acquired from the decedent who died in 2010 and the executor makes the Section 1022 Election, then when the property is sold during 2010, 2011 or any subsequent year, the recipient's (seller's) basis in the property is determined under section 1022 rather than under section 1014.

Furthermore, sections 1022(b) and (c) allow the executor of such a decedent's estate to allocate additional basis (Basis Increase) to increase the basis of certain assets that both are acquired from the decedent and are owned by the decedent (within the meaning of section 1022(d)) (hereinafter, *owned by the decedent*) at death. If the property is acquired from and owned by the decedent, and if the decedent's adjusted basis in the property is less than the property's FMV on the decedent's date of death, then the executor generally may allocate Basis Increase to the property, provided that the property's total basis may not exceed the property's FMV on the date of death.

(2) *Property Not Subject to Section 1022*. If the decedent's executor makes the Section 1022 Election, section 1022 will apply to determine a recipient's basis only in property acquired from the decedent as further described in section 4.01(3) of this revenue procedure. Thus, section 1022 does not determine the recipient's basis in every type of property transferred from a decedent who died in 2010. An example of property that is not property acquired from the decedent is property that constitutes a right to receive an item of income in respect of a decedent under section 691 (IRD). Section 1022(f). For purposes of section 1022, annuities subject to income tax under section 72 are considered property that constitutes the right to receive an item of IRD. Rev. Rul. 2005–30, 2005–1 C.B. 1015. The recipient's basis in property that is not subject to section 1022 is determined under other applicable sections of the Code.

(3) *Property Acquired From the Decedent — Section 1022(e)*. Property acquired from the decedent (within the meaning of section 1022(e)) is property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent. The term also includes property transferred by the decedent during the decedent's lifetime: (i) to a qualified revocable trust as defined in section 645(b)(1), regardless of whether the election under section 645 is made for that trust; or (ii) to any other trust with respect to which the decedent reserved the right to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust (which, for this purpose, is deemed to include a retained reversionary interest in the trust on death and trust property subject to any retained power of appointment). Finally, the term includes any other property that passes from the decedent by reason of death to the extent that such property passes without consideration, such as: (i) any property transferred at the decedent's death by reason of the decedent's holding and/or exercising a general power of appointment (as defined in section 2041) with respect to such property if that power was not created by the decedent, (ii) property held by the decedent and another person as joint tenants with right of survivorship or as tenants by the entirety; and (iii) the surviving spouse's one-half interest in community property (as discussed in section 4.05 of this revenue procedure).

The term does not include, however, a decedent's interest in a qualified terminable interest property (QTIP) trust or similar arrangement described in section

1022(c)(5) funded for the benefit of the decedent by the decedent's predeceased spouse. As a result, this property is not subject to section 1022 and a recipient's basis in this property will not be determined under section 1022. See section 4.01(2) of this revenue procedure.

(4) *Property Owned by the Decedent — Section 1022(d).* Property acquired from the decedent must also be owned by the decedent at death (within the meaning of section 1022(d)) to be eligible for the allocation of Basis Increase under sections 1022(b) and/or (c). Section 1022(d)(1)(A). Thus, property may be acquired from the decedent, and its basis will be determined under section 1022(a), but will not be eligible to receive an allocation of Basis Increase unless that property is also owned by the decedent at death. Property owned by the decedent at death includes, but is not limited to: (i) any property legally titled in the name of the decedent at death (and not held by the decedent solely in a legal or representative capacity); (ii) certain jointly owned property, whether owned as tenants in common or with rights of survivorship (see section 1022(d)(1)(B)(i)); (iii) property transferred by the decedent during life to a qualified revocable trust as defined in section 645(b)(1), regardless of whether the election under section 645 is made for that trust; and (iv) certain community property (see section 1022(d)(1)(B)(iv)).

Section 1022(d)(1)(B) provides additional rules defining ownership for this purpose and specifically states that, for purposes of determining whether Basis Increase may be allocated to property, certain property is not owned by the decedent at death. For example, property over which the decedent holds any power of appointment is not considered owned by the decedent at death. In addition, although considered to have been acquired from the decedent, property transferred to a trust by the decedent during life in which the decedent retained a power to alter, amend, or terminate the trust is not considered owned by the decedent at death for this purpose. Property transferred to a trust by the decedent during life in which the decedent retained an income interest is not considered owned by the decedent at death solely by reason of that retained income interest. In addition, because of the different definitions of ownership in sections 679 and 1022, although a transfer of property to a foreign trust by a United States grantor, for example, may be sufficient to cause that grantor to be treated as the owner of at least a portion of that trust for income tax purposes under section 679, such a transfer is not sufficient to result in the trust's being considered to be owned by the United States grantor at that grantor's death for purposes of section 1022(d).

Notwithstanding these examples, however, even though the property in these types of trusts would not be deemed to be owned by the decedent, if the terms of the trust require the trust property to revert back to the decedent upon death, then such property is deemed to be owned by the decedent. Finally, an interest in a QTIP trust or similar arrangement described in section 1022(c)(5) funded for the benefit of the decedent by a predeceased spouse of the decedent is not owned by the decedent for this purpose.

The provisions of sections 4.01(2), (3), and (4) are illustrated by the following examples:

*Example 1.* On August 1, 2006, decedent (D) created a qualified personal residence trust (QPRT) pursuant to § 25.2702–5(c). The term of the QPRT expires on July 31, 2011. The QPRT instrument provided that, if D dies prior to July 31, 2011, the property in the QPRT is to be distributed to D's child (C). D died in 2010, and D's executor made the Section 1022 Election. In this case, the property in the trust had been transferred to the trust by D during D's lifetime. The QPRT is not a qualified revocable trust as defined in section 645(b)(1) nor is it a trust over which the decedent reserved the right to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust. The property that passes to C under the QPRT instrument by reason of D's death is not considered to have been acquired from D and thus, section 1022 is not applicable to determine C's basis in the property held in the QPRT. Instead, C's basis in this property is determined under other applicable sections of the Code.

*Example 2.* Assume the same facts as in *Example 1*, except that the QPRT instrument provided that, if D dies prior to July 31, 2011, the QPRT terminates and the property in the QPRT is to be distributed to D's estate. Because the trust property becomes the property of D's estate at D's death, the trust property is considered to have been acquired from D. Section 1022(e)(1). For the same reason, the property is also considered owned by D and, therefore, Basis Increase may be allocated to this trust property.

(5) *Property Owned By and Acquired From the Decedent But Not Eligible for the Allocation of Basis Increase.* Notwithstanding the rules regarding the definition of property owned by and acquired from the decedent, section 1022 provides that Basis Increase may not be allocated to two types of property. First, pursuant to section 1022(d)(1)(C), the executor may not allocate Basis Increase to property that is acquired by the decedent by gift or by *inter vivos* transfer for less than adequate and full consideration in money or money's worth during the three-year period ending on the date of the decedent's death. This prohibition does not apply, however, to property acquired by the decedent from the decedent's spouse, provided the property had not been transferred to the spouse during such three-year period in whole or in part by gift or by *inter vivos* transfer for less than adequate and full consideration in money or money's worth.

Second, pursuant to section 1022(d)(1)(D), the executor may not allocate Basis Increase to the stock or securities of a foreign personal holding company, a DISC or former DISC, a foreign investment company, or a passive foreign investment company, unless such company is a qualified electing fund as defined in section 1295 with respect to the decedent.

.02 *Amount of Basis Increase.*

(1) *Basis Increase.* Basis Increase consists of the sum of the General Basis Increase (Aggregate Basis Increase and Carryovers/Unrealized Losses Increase) under section 1022(b) and the Spousal Property Basis Increase under section 1022(c).

(2) *General Basis Increase.* The General Basis Increase is the sum of the Aggregate Basis Increase and the Carryovers/Unrealized Losses Increase under section 1022(b).

(a) *Aggregate Basis Increase.* The Aggregate Basis Increase is $1,300,000 under section 1022(b)(2)(B).

(b) *Carryovers/Unrealized Losses Increase.* The Carryovers/Unrealized Losses Increase consists of the sum of: (i) the amount of any capital loss carryovers under section 1212(b) that would (but for the decedent's death) have been carried from the decedent's last taxable year to a later taxable year; (ii) the amount of any net operating loss carryovers under section 172 that would (but for the decedent's death) have been carried from the decedent's last taxable year to a later taxable year; and (iii) the amount of unrealized losses that would have been allowable under section 165 if the property acquired from the decedent had been sold at FMV immediately before the decedent's death. Section 1022(b)(2)(C).

The capital loss carryovers under section 1212(b) and the net operating loss carryovers under section 172 available to be included in General Basis Increase are the losses that would carry forward to years after the year of the decedent's death.

The amount of unrealized losses consists solely of the losses described in section 165(c)(1) and (2) from all property acquired from the decedent that would have been allowable as a deduction, if the property had been sold at FMV immediately before the decedent's death. However, losses described in section 165(c)(3) are sustained prior to the decedent's death and would not arise on a hypothetical sale of the property. These losses therefore must be claimed instead on the decedent's final Form 1040, and may not be included in the Carryovers/Unrealized Losses Increase. For the purpose of computing unrealized losses, the capital loss limitations referred to in section 165(f) are ignored. Thus, for example, the amount of any loss that would have been allowable under section 165 if the property acquired from the decedent had been sold at FMV immediately before the decedent's death is determined without the dollar limitations on capital losses under section 1211. Section 1022(b)(2)(C)(ii).

Existing income tax rules will apply to determine the decedent's share of these loss carryovers and unrealized losses under section 172 and section 1212(b) if the decedent's final Form 1040 is filed jointly with the decedent's surviving spouse. Thus for example, if a calendar year decedent and the surviving spouse file a joint Form 1040 for 2010, these amounts will be determined based on their tax liability with respect to the decedent's final taxable year ending on the date of the decedent's death and the surviving spouse's taxable year ending on December 31, 2010. With regard to such loss carryovers and unrealized losses arising from community property, see sections 4.05 and 4.06(4) of this revenue procedure.

The provisions of this section 4.02(2)(b) are illustrated by the following example:

*Example 3*. D owned 100 shares of stock that D held for profit within the meaning of section 165(c)(2). The stock is a capital asset, and any gain or loss from the sale of the stock would be long-term capital gain or loss under sections 1221 and 1222(3). D died in 2010, still owning the stock. As of D's date of death, D's adjusted basis in the stock pursuant to section 1011 was $5,000, and the stock's FMV on D's date of death was $1,000. D did not sell the stock during life, and thus did not incur a loss under section 165(c)(2) reportable on D's final Form 1040. The stock is considered to be property owned by and acquired from D. D's executor made the Section 1022 Election. If D had sold the stock immediately prior to D's death, D would have had a net long-term capital loss of $4,000. Based on D's 2010 taxable income, D would have been able to deduct $3,000 of the loss and $1,000 would have been carried over to future years. Section 1211(b). For purposes of section 1022, however, the full unrealized net long-term capital loss of $4,000, that would have been available to D if D had sold the stock before death, is available as a Carryovers/Unrealized Losses Basis Increase.

(3) *Spousal Property Basis Increase*. The Spousal Property Basis Increase is $3,000,000 under section 1022(c)(2) and may be allocated to any or all property owned by and acquired from the decedent that also satisfies the definition of qualified spousal property in section 1022(c)(3). Qualified spousal property is property that either is transferred outright to the decedent's surviving spouse (within the meaning of section 1022(c)(4)) or is QTIP (within the meaning of section 1022(c)(5)), whether or not held in trust. The definition of QTIP under this provision does not require that a QTIP election under section 2056(b)(7) be made.

The executor may allocate Spousal Property Basis Increase to qualified spousal property that has already been distributed. See paragraph I.D.2 of Notice 2011–66 regarding relief for allocating Spousal Property Basis Increase to such property distributed after the due date of the Form 8939.

In addition, Spousal Property Basis Increase also may be allocated to property that is sold (regardless of whether the allocation of Spousal Property Basis Increase is made before or after such sale) prior to its distribution. However, this allocation may be made only to the extent that the executor (1) certifies on the Form 8939 that the net proceeds from the sale of that property will be distributed to or for the benefit of the decedent's surviving spouse in a manner that would qualify property as qualified spousal property, and (2) attaches to Form 8939 each document providing a bequest or devise to the surviving spouse.

The allocation of Spousal Property Basis Increase to property not distributed in kind is illustrated by the following examples. In each example, assume that the decedent's Aggregate Basis Increase and Carryovers/Unrealized Losses Increase have been fully allocated to other assets.

*Example 4*. D died in 2010 owning 20,000 shares of Corporation X stock. D's executor made the Section 1022 Election. D's adjusted basis in the stock is $600,000 ($30 per share), and the FMV on D's date of death is $2,000,000 ($100 per share). Under the terms of D's will, D's Spouse (S) is to receive 50 percent of D's estate, outright. Four months after D's death, the FMV of the stock declines to $1,800,000 ($90 per share). D's executor sells all 20,000 shares of the stock and receives $1,770,000 in proceeds net of sales commissions (thus, $88.50 per share). D's executor intends to distribute all of the proceeds from the sale of the stock to S, in partial satisfaction of S's residuary bequest; there are no known outstanding liabilities that would reduce this distribution. D's executor may allocate up to $1,400,000 of Spousal Property Basis Increase ($70 to each of the 20,000 shares of stock) if the required certification and supporting documentation is included on a timely filed Form 8939. (Note that, to the extent that more than $58.50 per share is allocated to the stock, the sale will generate a loss.)

*Example 5*. The facts are the same as in *Example 4* except that D's executor applies $165,000 of the net proceeds from the sale of the stock to pay administrative expenses of D's estate. D's executor intends to distribute the remaining $1,605,000 of net proceeds from the sale of the stock to S. Spousal Property Basis Increase may be allocated to no more than 18,135 shares. This number of shares is determined either by dividing the net proceeds to be distributed to S by the net per-share proceeds ($1,605,000 / $88.50 = 18,135.6 shares, limited for this purpose to 18,135 whole shares), or by calculating the ratio of the net proceeds payable to S to the total net proceeds (20,000 shares x $1,605,000 / $1,770,000 = 18,135.6 shares, thus limited to 18,135 whole shares). As in *Example 4*, D's executor may allocate up to $70 of Spousal Property Basis Increase to each of these 18,135 shares of the stock (for a total of $1,269,450), all of the net proceeds of which will be distributed to S, provided a certification and supporting documentation are included on a timely filed Form 8939.

*Example 6*. D died in 2010 owning personal property with an adjusted basis of $200,000 and a FMV on D's date of death of $500,000. D's executor made the Section 1022 Election. Under the terms of D's will, D's spouse (S) is to receive 50 percent of D's estate, outright. Four months after D's death, D's executor sells the personal property for $600,000. D's executor applies $150,000 of the net proceeds from the sale of the personal property to pay administrative expenses of D's estate and intends to distribute the remaining $450,000 of net proceeds from the sale of the personal property to S. D's executor may allocate no more than $225,000 of Spousal Property Basis Increase to the personal property. This maximum allocation is determined by multiplying the unrealized appreciation at death ($300,000) by the ratio of net proceeds to be distributed to S over the total net proceeds of the sale. Thus, D's executor may allocate up to $225,000 ($300,000 X ($450,000 / $600,000)) of Spousal Property Basis Increase to the personal property, provided a certification and supporting documentation are included on a timely filed Form 8939.

Spousal Property Basis Increase also may be allocated to property held by a testamentary charitable remainder trust (CRT) as defined in section 664 (subject to the limit of section 1022(d)(2)), if the surviving spouse is the sole non-charitable beneficiary of the CRT and the CRT would have qualified for the marital deduction under section 2056(b)(8) if the executor of the decedent's estate had not made the Section 1022 Election.

(4) *Nonresident Decedents who are not citizens of the United States*. In the case of a nonresident decedent who was not a citizen of the United States at death, the amount of the Aggregate Basis Increase is limited to $60,000 and is not increased by any Carryovers/Unrealized Losses Increase. This limitation in section 1022(b)(3), however, only applies to limit the available General Basis Increase to $60,000. Accordingly, an executor of the estate of a nonresident decedent who was not a citizen of the United States at death may allocate Spousal Property Basis Increase to qualified spousal property (within the meaning of section 1022(c)(3)) owned by and acquired from the decedent.

.03 *General Rules for Allocating Basis Increase*. The executor may allocate Basis Increase to property owned by and acquired from the decedent on a property-by-property basis, provided that the decedent's adjusted basis in each such property (after the allocation, if any) does not exceed the FMV of that property at the decedent's death. For example, Basis Increase may be allocated to one or more shares of stock or to a particular block of stock rather than to the decedent's entire holding of that stock. Generally, Basis Increase may be allocated to property owned by and acquired from the decedent even after the executor has disposed of or distributed the property. For a special rule regarding Spousal Property Basis Increase, see section 4.02(3) of this revenue procedure.

For each property, the sum of the decedent's adjusted basis in that property and the Basis Increase allocated to that property may not exceed the FMV of that property on the decedent's date of death. Section 1022(d)(2). Under this rule, the executor may not allocate any Basis Increase to increases in value occurring after the decedent's death.

For purposes of section 1022(a), references to the term "property" include interests in that property. Thus, Basis Increase may be allocated to some or all of the decedent's shares of stock in a particular company, or to a life or remainder interest owned by the decedent at death. However, if, by reason of the decedent's death, the decedent's property is divided into different interests that are not undivided portions or fractional interests of each and every interest or right in the property that was owned by the decedent, Basis Increase may not be allocated separately to the various interests in that property created by reason of the decedent's death. An example of such a division of property is the division of property owned outright by the decedent at death into a life interest and a remainder interest in that property. Basis Increase may be allocated to the property owned by the decedent at death, but may not be allocated separately to the life estate and/or remainder interest.

.04 *Determination of Fair Market Value*.

(1) *In General*. The FMV of property acquired from the decedent who died in 2010 is determined in the same manner for purposes of section 1022 as for purposes of the estate tax. Thus, the provisions contained in the regulations under section 2031 that require appraisals to determine the FMV of certain property included in the gross estate for federal estate tax purposes also apply for purposes of determining the FMV of property acquired from the decedent under section 1022. The executor must attach any appraisals required under section 2031 to the Form 8939.

(2) *Aggregation Rule*. The Basis Increase allocated to property acquired from the decedent by a recipient cannot increase the recipient's basis in that property or property interest above the FMV of that property or interest in the hands of the decedent at death. See section 1022(d)(2). Therefore, for purposes of section 1022, the FMV of an undivided portion of the decedent's property that is acquired from the decedent at death is a fractional share of the FMV of the decedent's property at death. Thus, if each of two or more recipients acquires an undivided portion of a property from the decedent, then the FMV of each recipient's portion of that property for purposes of section 1022 is the FMV of the decedent's entire interest in the property at death multiplied by a fraction. The numerator of that fraction is the undivided portion of the decedent's property acquired by that recipient, and the denominator is the decedent's entire interest in that property at death. An undivided portion of the decedent's property refers to a fraction or percentage of each and every interest or right the decedent held in the property at death.

.05 *Special Rules for Community Property*. The decedent's interest in community property held by the decedent and the surviving spouse under the community property laws of any state or possession of the United States or any foreign jurisdiction is treated as owned by and acquired from the decedent if the decedent's interest satisfies the requirements of sections 1022(d) and (e). If at least one-half of the whole of the community interest is treated as owned by and acquired from the decedent under these provisions (without regard to the special rule for community property in section 1022(d)(1)(B)(iv)), the surviving spouse's one-half interest in that community property also is treated as owned by and acquired from the decedent for purposes of section 1022. Section 1022(d)(1)(B)(iv). Accordingly, the surviving spouse's basis in his or her one-half interest in community property, as determined under section 1022(a), will be the lesser of the surviving spouse's adjusted basis of that interest in such community property or the FMV of that interest on the decedent's date of death. In addition, Basis Increase may be allocated to the surviving spouse's one-half interest in such community property.

If both spouses' interests in such community property are treated as owned by and acquired from the decedent as described in the preceding paragraph, all of the unrealized losses described in section 4.02(2)(b) of this revenue procedure that would have been allowable to both the decedent and the surviving spouse if the property had been sold at FMV immediately before the decedent's death are included in the General Basis Increase. In contrast, only the decedent's net operating loss carryovers and capital loss carryovers are eligible to be included in the General Basis Increase. Further, to the extent the decedent's net operating loss carryovers and capital loss carryovers are deductible on the final jointly filed Form 1040, they are not available to be added to the General Basis Increase.

The provisions of this section 4.05 are illustrated by the following examples:

*Example 7.* (i) D and D's spouse (S) live in a community property state (State). D died in 2010, and D's executor made the Section 1022 Election. At D's death, Property X, community property of D and S under the laws of State, had an adjusted basis of $1,000,000 and a FMV of $8,000,000. D and S used Property X in a trade or business within the meaning of section 165(c)(1). Under the community property laws of State, each spouse is entitled to an undivided equal share of community property. D and S have filed joint Forms 1040 for all taxable years in which they have owned Property X, including 2010, the year of D's death. D and S have a total of $100,000 of net operating losses under section 172, after the deductions taken on D's and S's final joint Form 1040. $50,000 of the $100,000 of net operating losses would (but for D's death) be carried from D's last taxable year to a later taxable year of D. Under the community property laws of State, upon the death of a married person, one-half of the community property belongs to the decedent and the other one-half belongs to the surviving spouse. Therefore, one-half of Property X belongs to D and the other one-half belongs to S. In D's will, D bequeathed D's one-half interest in Property X to D's child (C). In this case, C acquired Property X by bequest, and therefore, Property X is acquired from D and is subject to the provisions of section 1022. As a result, C's basis in Property X under section 1022(a)(2) is $500,000, the lesser of D's adjusted basis in D's one-half interest in Property X or the FMV of that interest at D's death. In addition, because Property X is considered as owned by D at the time of death, General Basis Increase may be allocated to D's interest in Property X. The executor of D's estate has $1,300,000 in Aggregate Basis Increase and $50,000 (D's share of the $100,000 of the unused net operating losses) in Carryovers/Unrealized Losses Increase available to allocate to the interest acquired by C in Property X.

(ii) On the date of D's death, the other one-half interest in Property X belongs to S under the laws of State. As a result, for purposes of section 1022, S's one-half interest in Property X is deemed to have been owned by and acquired from D. Under section 1022(a)(2), S's basis in S's one-half interest in Property X is $500,000, the lesser of S's adjusted basis in S's one-half interest or the FMV of that interest as of D's death. That interest has a FMV on D's death of $4,000,000.

(iii) The executor may allocate Basis Increase to S's one-half interest in Property X. In this case, the executor decides to allocate $450,000 of Aggregate Basis Increase, $50,000 of Carryovers/Unrealized Losses Increase, and $3,000,000 in Spousal Property Basis Increase to S's one-half interest in Property X. As a result, S's basis in S's one-half interest in Property X is $4,000,000 (the sum of S's own adjusted basis of $500,000 and S's allocated Basis Increase of the sum of $450,000, $50,000, and $3,000,000), equal to its FMV as of D's date of death. D's $50,000 in unused net operating losses is included in Basis Increase that is allocated by D's executor to S's interest in Property X; the other $50,000 of the unused net operating losses is available to S on S's subsequent income tax returns.

(iv) With respect to the one-half interest in Property X passing from D to C, the executor may allocate any or all of the remaining General Basis Increase of $850,000 to this property. In this case, the executor allocates the entire remaining $850,000 of General Basis Increase to C's one-half interest in Property X. C's basis in the one-half interest in Property X is $1,350,000 ($500,000 plus $850,000).

*Example 8.* (i) The facts are the same as in *Example 7*, except that the FMV of Property X on D's date of death was $800,000. Under section 1022(a)(2), S's basis in S's one-half interest in Property X is $400,000, the lesser of S's $500,000 in adjusted basis and the FMV of that interest in Property X as of D's date of death. D's executor may not allocate any Aggregate Basis Increase, Carryovers/Unrealized Losses Increase, or Spousal Property Basis Increase to spouse's one-half interest in the community property because the property's basis, as augmented under section 1022, may not exceed its FMV on D's date of death. For the same reason, D's executor may not allocate any General Basis Increase to the one-half interest in Property X passing to C.

(ii) A loss of $200,000 would have been incurred if Property X had been sold at FMV immediately before D's death. All of this $200,000 is available as Carryovers/Unrealized Losses Increase that may be allocated to property owned by and acquired from D with a basis pursuant to section 1022(a)(2) that is less than the FMV as of D's date of death.

.06 *Interaction of Section 1022 with Certain Other Income Tax Provisions.*

(1) *Holding Period of Inherited Property.* To the extent the recipient's basis in property acquired from the decedent is determined under section 1022, the recipient's holding period of that property shall include the period during which the decedent held the property, whether or not the executor allocates any Basis Increase to that property.

In computing the applicable percentage under section 1250 for purposes of determining the amount of ordinary gain on the sale of section 1250 property, section 1250(e) applies to determine the period of time the recipient is deemed to have held section 1250 property acquired by gift or on the death of a decedent. Therefore, to the extent a recipient's basis in property is determined under section 1022, the recipient's holding period of such property under section 1250(e)(2) includes the period during which the property was held by the decedent, regardless of whether the executor allocates any Basis Increase to that property.

(2) *Tax Character of Inherited Property.* The tax character of property acquired from the decedent by a recipient is determined in the same way as the holding period. Thus, to the extent a recipient's basis in property is determined under section 1022, the tax character of the property is the same as it would have been in the hands of the decedent. Consequently, for property described in section 1221 (capital assets) or section 1231 (property used in a trade or business and involuntary conversions), and for property subject to section 1245 (depreciation recapture upon disposition of certain depreciable property) or section 1250 (depreciation recapture upon disposition of certain depreciable real property), the tax character of the property described in these sections (the basis of which is determined under section 1022) in the hands of the recipient is the same as it would have been in the hands of the decedent. However, the tax character of the property may be affected by a subsequent change in the recipient's use of the property.

The provisions of this section 4.06(2) are illustrated by the following example:

*Example 9.* D owned tangible personal property (section 1245 property) and claimed on D's income tax return a depreciation deduction under section 168 that would have been subject to recapture under section 1245 if D had sold the property prior to D's death. D died in 2010 and D's executor made the Section 1022 Election. D bequeathed all of D's tangible personal property to D's child (C). Because C's basis is determined under section 1022, the property is section 1245 property in the hands of C and therefore will be subject to recapture under section 1245 when sold by C, regardless of whether the property is depreciable property in the hands of C or whether the executor allocates any Basis Increase to that property. *See* § 1.1245–3(a)(3).

(3) *Depreciation of Property Acquired from the Decedent.* If section 1022 applies to property acquired from the decedent that is depreciable property in the hands of the recipient, regardless of whether the executor allocates any Basis Increase to the property, the recipient is treated for depreciation purposes as the decedent for the portion of the recipient's basis in the property that equals the decedent's adjusted basis in that property. Consequently, the recipient determines any allowable depreciation deductions for this carryover basis by using the decedent's depreciation method, recovery period, and convention applicable to the property. If the property is depreciable property in the hands of both the decedent and the recipient during 2010, the allowable depreciation deduction for 2010 for the decedent's adjusted basis in the property is computed by using the decedent's depreciation method, recovery period, and convention applicable to the property, and is allocated

between the decedent and the recipient on a monthly basis. This allocation is made in accordance with the rules in § 1.168(d)–1(b)(7)(ii) of the Income Tax Regulations for allocating the depreciation deduction between the transferor and the transferee.

The portion of the recipient's basis in the property that exceeds the decedent's adjusted basis in the property as of the decedent's date of death (for example, the Basis Increase allocated to the property by the executor) is treated for depreciation purposes as applying to a separate asset that the recipient placed in service on the day after the date of the decedent's death. Accordingly, the recipient determines any allowable depreciation deductions for this excess basis by using the depreciation method, recovery period, and convention applicable to the property on its placed-in-service date or, if not held on that date as depreciable property by the recipient, on the date of the property's conversion to depreciable property.

(4) *Passive Activity Loss Provisions*. Section 469(a) disallows certain losses from passive activities. However, pursuant to section 469(b), losses disallowed under section 469(a) may be suspended and carried forward. Section 469(g)(2) provides that, if an interest in a passive activity is transferred by reason of the taxpayer's death, the taxpayer may treat suspended passive losses as losses that are not from a passive activity (and therefore may deduct the losses) to the extent such losses are greater than the excess (if any) of the basis of such property in the hands of the transferee, over the adjusted basis of such property immediately before the death of the taxpayer. Section 469(j)(6) provides that, when an interest in a passive activity is transferred by gift, the basis of such interest immediately before the transfer is increased by the amount of any passive activity losses allocable to such interest that have not been allowed as deductions as a result of section 469(a). Once used to increase the donor's basis, these losses may not be deducted for any taxable year.

Because property owned by the decedent at death will be treated under section 1022 as having been transferred by gift, section 469(j)(6), rather than section 469(g)(2), applies to determine the decedent's adjusted basis in such property. The basis adjustment under section 469(j)(6) is deemed to occur immediately prior to the decedent's death, and thus is applied to determine the decedent's adjusted basis in the property at death as described in section 1022(a)(2)(A). In addition, any loss that would have been sustained under sections 165(c)(1) or (c)(2) on a hypothetical sale of the property immediately prior to the decedent's death (equal to the excess of the decedent's adjusted basis (determined as described under section 469(j)(6)) over the FMV at death) may be included in the section 165 losses in the General Basis Increase. Because the reduction in the hypothetical loss under section 165 by reason of the section 469 basis adjustment equals the amount of section 469 loss added to the decedent's basis, there is no duplication of a benefit under these two sections.

Section 1022(d)(1)(B)(iv) provides that the surviving spouse's interest (as well as the decedent's interest) in certain community property is deemed to have been owned by and acquired from the decedent, and thus 100 percent of that community property is deemed to have been transferred by gift for purposes of section 1022. Because section 469(j)(6) increases basis by the amount of suspended passive activity losses allocable to the interest that is transferred by gift, 100 percent of those losses, rather than only the decedent's one-half of such losses, are to be added to determine the decedent's and the spouse's adjusted basis in that community property for purposes of section 1022(a) and to determine the amount of unrealized section 165 losses to be included in the General Basis Increase. To the extent that losses attributable to the spouse's interest in the community property are used to increase basis and/or were included in Carryovers/Unrealized Losses Increase allocated by the decedent's executor, such losses may not thereafter be deducted by the spouse. However, to the extent that losses attributable to the spouse's interest in community property are not so used by the decedent's executor, they remain the spouse's suspended passive activity losses. For purposes of this computation, these losses will be deemed to be the last part of Basis Increase allocated, and the decedent's share of these losses will be deemed to be allocated before the surviving spouse's share of these losses.

The provisions of this section 4.06(4) are illustrated by the following examples:

*Example 10*. D owned an apartment building that generated losses that have been disallowed under section 469. D died in 2010 and D's executor made the Section 1022 Election. The building is property owned by and acquired from D. Pursuant to D's will, D's child (C) is to acquire the building. On D's date of death, the FMV of the building was $100,000, the basis of the building was $10,000, and the suspended passive activity losses allocable to the building were $50,000. Pursuant to section 469(j)(6), the $50,000 in suspended passive activity losses are added to D's basis of $10,000, resulting in an adjusted basis of $60,000. For purposes of section 1022(b)(2)(C)(ii), a hypothetical sale of the property just before D's death would have produced a gain of $40,000 ($100,000 FMV less D's adjusted basis of $60,000), so there is no loss under section 165 from this property. C's basis in the building as of D's date of death is $60,000, plus any amount of the General Basis Increase allocated to this property.

*Example 11*. Assume the same facts as in *Example 10*, except that the suspended passive activity losses allocable to the building are $200,000 instead of $50,000. Pursuant to section 469(j)(6), the $200,000 in suspended passive activity losses are added to D's basis of $10,000 resulting in an adjusted basis of $210,000. Under section 1022(a)(2), C's basis in the building is $100,000 (the lesser of D's adjusted basis in the building ($210,000) and the building's FMV on the date of death ($100,000)). Thus, C's basis in the building reflects $90,000 of the section 469 suspended losses. If the property had been sold at FMV immediately before D's death, a section 165 loss of $110,000 would have been allowable (FMV of $100,000 minus $210,000 of D's adjusted basis). This $110,000 constitutes the section 165 loss that may be included in the General Basis Increase.

(5) *Recognition of Gain on Satisfaction of Pecuniary Bequest with Appreciated Property*. Section 1040, as applicable to the estates of decedents who died in 2010 and whose executors make the Section 1022 Election, provides that, if an executor distributes appreciated property to satisfy a pecuniary bequest, the estate must recognize gain to the extent the FMV of the distributed property on the date of distribution exceeds its FMV on the date of the decedent's death. The basis of that property in the hands of the recipient then equals the sum of the basis of that property immediately before the distribution and the amount of gain recognized by the estate.

Section 1040 further provides that the same rule will apply to distributions of appreciated trust property made in satisfaction of trust provisions that are the equivalent of a pecuniary bequest, but only to the extent so provided in regulations. This safe harbor will apply this rule to quali-

fied revocable trusts as defined in section 645(b)(1), as well as to trusts that would have been included in the decedent's gross estate for federal estate tax purposes under section 2036, 2037, or 2038 had the decedent's executor not made the Section 1022 Election.

The provisions of section 1040, however, do not apply to the distribution of property that constitutes the right to receive an item of IRD in satisfaction of a pecuniary bequest.

(6) *Sale or Exchange Treatment of Transfers to Nonresident Aliens.* Section 684, enacted in 1997, generally provides that any transfer of property by a United States person to a foreign estate or trust (except to the extent that a person is treated as the owner of the trust under section 671) is treated as a sale or exchange of such property, and requires the transferor to recognize gain in the amount of any excess of the FMV of the property at the time of the transfer over the transferor's adjusted basis in the property. For transfers of property occurring on the death of a decedent whose executor makes the Section 1022 Election, this provision also applies to transfers of property by United States persons to nonresident aliens.

The existing regulations provide an exception to the general rule of taxation under section 684 in the case of a transfer of property by reason of the death of a United States transferor, but only if the basis of such property in the hands of the recipient is determined under section 1014(a). Section 1.684–3(c). If the recipient's basis in such property is not determined under section 1014(a), section 684 continues to apply, and the United States transferor is treated as having transferred the property immediately before death and is required to recognize the built in gain in the property transferred at that time. Section 1.684–3(g), *Example 3*.

For purposes of applying section 684 to transfers of property by reason of the death of a United States person in 2010 whose executor makes the Section 1022 Election, the question has arisen as to whether (1) section 684 applies prior to section 1022, with the effect of treating the transfer as a sale for FMV before any Basis Increase may be allocated to the property, or (2) whether the executor's allocation of Basis Increase is deemed to increase the recipient's basis in the property before the amount of any unrecognized gain taxable under section 684 is determined.

If the property is owned by and acquired from the decedent, the executor's allocation of Basis Increase will be deemed to occur prior to the application of section 684. Specifically, in determining the adjusted basis of the property in the hands of the decedent under section 684(a)(2), any allocation of Basis Increase shall be deemed to occur prior to the computation of gain under section 684. Thus, the amount of gain recognized under section 684 on the transfer may be reduced or even eliminated if sufficient Basis Increase is allocated to such property.

However, if the property transferred is not owned by the decedent at death, then no Basis Increase may be allocated to the property, and the decedent will be required to recognize all of the unrealized gain in the property transferred to the foreign estate or trust or to the nonresident alien as provided in section 684.

The provisions of this section 4.06(6) are illustrated by the following examples:

*Example 12.* D, a United States citizen, acquired stock in 1984 for $1,000 that had a FMV of $30,000 on D's date of death in 2010. D bequeathed the stock to D's brother (N), a nonresident alien. The executor of D's estate made the Section 1022 Election, and, therefore, may allocate General Basis Increase of up to $29,000 to this stock. Such an allocation of basis will be deemed to have occurred prior to the deemed sale under section 684. Accordingly, if the executor allocates $29,000 of General Basis Increase to the stock, then D will recognize zero gain on D's final Form 1040 under section 684 on the bequest of the stock to N.

*Example 13.* D, a United States citizen, acquired real property located in the United States in 1984 for $1,000,000 that had a FMV of $10,000,000 on D's date of death in 2010. D's executor made the Section 1022 Election. D's will devised the real property to D's brother (N), a nonresident alien. Assuming that the General Basis Increase available to the executor of D's estate for allocation is $1,300,000, the executor may allocate up to the entire amount of General Basis Increase to this property. Such an allocation will be deemed to have occurred prior to the deemed sale under section 684. Accordingly, if the executor allocates $1,300,000 of General Basis Increase to this property, D will recognize gain on D's final Form 1040 under section 684 in the amount of $7,700,000 ($10,000,000 of FMV less $2,300,000 of basis) on the devise of the property to N.

*Example 14.* In 2005, D, a United States citizen, transferred securities with a FMV of $5,000 and an adjusted basis of $1,000 to a foreign trust (FT). The income from FT was payable to D during D's life, but D retained no other right to and no power over FT. At all times after the 2005 transfer through D's death, FT has a United States beneficiary, D (within the meaning of section 679(c)), and D was treated as the owner of FT under section 679(a). D died in 2010 and D's executor made the Section 1022 Election. The FMV of the assets of FT at D's death was $30,000. Notwithstanding that D was the owner of FT under section 679 on the date of death, because the securities were transferred by D in an *inter vivos* transfer to FT over which D retained no other right or power, the securities were not acquired from the decedent and section 1022 does not apply to the securities in FT. Under §1.684–2(e)(1), D is treated as having transferred the securities to FT immediately before D's death, and D must recognize $29,000 of gain on D's final Form 1040 under section 684(a).

.07 *Testamentary Charitable Remainder Trusts.* Section 1.664–1(a)(1)(iii) provides, among other things, that a trust is a CRT if a deduction is allowable under section 170, 2055, 2106, or 2522 and the trust meets the description of a charitable remainder annuity trust or a charitable remainder unitrust, as such terms are described in §§ 1.664–2 and 1.664–3, respectively. A testamentary CRT that otherwise qualifies as a CRT under section 664 and the regulations thereunder, but fails to meet the requirement that a deduction is allowable under section 2055 solely because the decedent's executor makes a Section 1022 Election thus making section 2055 inapplicable to the decedent's estate, will qualify as a CRT under section 664.

## SECTION 5. AREAS NOT COVERED BY THIS REVENUE PROCEDURE

This Revenue Procedure does not address the manner in which the executor of the estate of a decedent who died in 2010 makes the Section 1022 Election. For information on making that election, the deadline for making that election and related procedures, and on allocating the decedent's GST exemption to transfers occurring at a death occurring in 2010, see Notice 2011–66.

## SECTION 6. EFFECTIVE DATE

This revenue procedure is effective August 29, 2011, the date this revenue procedure was published in the Internal Revenue Bulletin. However, taxpayers may apply the safe harbor in this revenue procedure for prior periods.

## SECTION 7. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been submitted to the Office of Management and Bud-

get (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) and OMB approval is pending. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information requirement in this revenue procedure is in section 4.02(3) and section 4.04(1) of this revenue procedure. The collection of information in section 4.02(3) relates to certain documents the executor is required to attach to the Form 8939 if the executor allocates Spousal Property Basis Increase to property that is sold prior to its distribution to the surviving spouse.

The collection of information in section 4.04(1) relates to the requirement that the executor obtain and attach to the Form 8939 the FMV appraisal of certain property acquired from the decedent. This collection of information is necessary for the proper performance of the function of the IRS in the collection of the income tax when the property is later sold by the recipient or other holder of the property. In addition, this collection is necessary to comply with the requirements of section 6018.

We estimate that 7,000 executors of estates of decedents who died in 2010 will make the Section 1022 Election and thus will be required to file Form 8939, and that it will take approximately 8 hours to prepare the documentation. The total reporting burden is estimated to be 56,000 hours.

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

## SECTION 8. DRAFTING INFORMATION

The principal authors of this revenue procedure are Laura Urich Daly, Theresa Melchiorre, and Mayer Samuels of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Laura Urich Daly, Theresa Melchiorre, or Mayer Samuels at (202) 622–3090 (not a toll-free call).

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

## Highway Use Tax; Filing and Payment for Taxable Period Beginning July 1, 2011

## REG–122813–11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9537) that provide guidance on the filing of Form 2290 "*Heavy Highway Vehicle Use Tax Return*" and payment of the associated highway use tax for the taxable period beginning July 1, 2011. These regulations affect owners and operators of highway motor vehicles with a taxable gross weight of 55,000 pounds or more. The text of the temporary regulations also serves as the text of the proposed regulations on this subject.

DATES: Written and electronic comments and requests for a public hearing must be received by October 18, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–122813–11), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–122813–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW; Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–122813–11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Natalie Payne, (202) 622–3130; concerning submissions of comments and requests for a public hearing, Regina Johnson, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Background**

This document contains proposed amendments to the Highway Use Tax Regulations (26 CFR part 41) under sections 6001, 6071 and 6151 of the Internal Revenue Code (Code). The text of temporary regulations published in this issue of the Bulletin also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

**Proposed Effective Date**

These regulations are proposed to apply to taxable use of highway motor vehicles occurring on or after July 1, 2011.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 this regulation, and because this regulation does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Code, this regulation 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 (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. 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 written 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 Natalie Payne, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 41 is proposed to be amended as follows:

**PART 41—EXCISE TAX ON USE OF CERTAIN HIGHWAY MOTOR VEHICLES**

Paragraph 1. The authority citation for part 41 is amended to read in part as follows:

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

Section 41.6001–2 also issued under 26 U.S.C. 6001. * * *

Section 41.6071(a)–1 also issued under 26 U.S.C. 6071(a). * * *

Section 41.6151(a)–1 also issued under 26 U.S.C. 6151(a). * * *

Par. 2. Section 41.6001–2 is amended by revising paragraphs (b)(1)(ii), (b)(4)(ii), (c)(2)(ii) and (c)(2)(iii) to read as follows:

*§41.6001–2 Proof of payment for State registration purposes.*

* * * * *

(b) * * * (1) * * *

(ii) [The text of this proposed amendment to §41.6001–2(b)(1)(ii) is the same as the text of §41.6001–2T(b)(1)(ii) published elsewhere in this issue of the Bulletin].

* * * * *

(4) * * *

(ii) [The text of this proposed amendment to §41.6001–2(b)(4)(ii) is the same as the text of §41.6001–2T(b)(4)(ii) published elsewhere in this issue of the Bulletin].

* * * * *

(c) * * *

(2) * * *

(ii) [The text of this proposed amendment to §41.6001–2(c)(2)(ii) is the same as the text of §41.6001–2T(c)(2)(ii) published elsewhere in this issue of the Bulletin].

(iii) [The text of this proposed amendment to §41.6001–2(c)(iii) is the same as the text of §41.6001–2T(c)(2)(iii) published elsewhere in this issue of the Bulletin].

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Par. 3. Section 41.6071(a)–1 is amended by adding paragraph (c) to read as follows:

*§41.6071(a)–1 Time for filing returns.*

* * * * *

(c) [The text of this proposed amendment to §41.6071(a)–1(c) is the same as the text of §41.6071(a)–1T(c) through (c)(3) published elsewhere in this issue of the Bulletin].

Par. 4. Section 41.6151(a)–1 is revised to read as follows:

*§41.6151(a)–1 Time and place for paying tax.*

[The text of this proposed amendment to §41.6151(a)–1 is the same as the text of §41.6151(a)–1T(a) and (b) published elsewhere in this issue of the Bulletin].

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

(Filed by the Office of the Federal Register on July 15, 2011, 4:15 p.m., and published in the issue of the Federal Register for July 20, 2011, 76 F.R. 43225)

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## Corporate Reorganizations; Distributions Under Sections 368(a)(1)(D) and 354(b)(1)(B); Correction

## Announcement 2011–43

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document describes a correction to final regulations (T.D. 9475, 2010–4 I.R.B. 304) that were published on Friday, December 18, 2009 (74 FR 67053). The regulations provide guidance regarding the qualification of certain transactions as reorganizations described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation is issued and distributed in the transaction. This document also contains final regulations under section 358 that provide guidance regarding the determination of the basis of stock or securities in a reorganization described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation is issued and distributed in the transaction. This document also contains final regulations under section 1502 that govern reorganizations described in section 368(a)(1)(D) involving members of a consolidated group.

DATES: This correction is effective on August 10, 2011, and is applicable on December 18, 2009.

FOR FURTHER INFORMATION CONTACT: Bruce A. Decker, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background**

The final regulations (T.D. 9475) that are the subject of this document are under sections 358, 368 and 1502 of the Internal Revenue Code.

**Need for Correction**

As published, the final regulations (T.D. 9475) contain an error that may prove to be misleading and is in need of clarification.

* * * * *

**Correction of Publication**

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

**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 1.1502–13 is amended by adding paragraph (l)(6) to read as follows:

*§1.1502–13 Intercompany transactions.*

* * * * *

(l) * * *

(6) *Effective/applicability date.* (i) *In general.* Paragraph (f)(7)(i) *Example 4.* applies to transactions occurring on or after December 18, 2009.

(ii) *[Reserved]*

* * * * *

LaNita Van Dyke,
*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

(Filed by the Office of the Federal Register on August 9, 2011, 8:45 a.m., and published in the issue of the Federal Register for August 10, 2011, 76 F.R. 49300)

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

# Abbreviations

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

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

## Numerical Finding List[1]

Bulletins 2011–27 through 2011–35

**Announcements:**



**Notices:**



**Proposed Regulations:**



**Revenue Procedures:**



**Revenue Rulings:**



**Treasury Decisions:**



[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2011–1 through 2011–26 is in Internal Revenue Bulletin 2011–26, dated June 27, 2011.

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

Bulletins 2011–27 through 2011–35

### Notices:

**2010-23**
Modified and supplemented by
Notice 2011-54, 2011-29 I.R.B. *53*

**2010-81**
Amended and supplemented by
Notice 2011-63, 2011-34 I.R.B. *172*

**2010-88**
Modified by
Ann. 2011-40, 2011-29 I.R.B. *56*

### Proposed Regulations:

**REG-118761-09**
Hearing scheduled by
Ann. 2011-38, 2011-28 I.R.B. *45*

### Revenue Procedures:

**2008-24**
Modified and superseded by
Rev. Proc. 2011-38, 2011-30 I.R.B. *66*

**2008-32**
Superseded by
Rev. Proc. 2011-39, 2011-30 I.R.B. *68*

### Revenue Rulings:

**58-225**
Obsoleted by
Rev. Rul. 2011-15, 2011-30 I.R.B. *57*

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2011–1 through 2011–26 is in Internal Revenue Bulletin 2011–26, dated June 27, 2011.

# INDEX

## Internal Revenue Bulletins 2011–27 through 2011–35

The abbreviation and number in parenthesis following the index entry refer to the specific item; numbers in roman and italic type following the parentheses refer to the Internal Revenue Bulletin in which the item may be found and the page number on which it appears.

Key to Abbreviations:

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

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