Internal Revenue
bulletin

Bulletin No. 1999–47
November 22, 1999

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. 8840, page 575.

REG–115932–99, page 583.

Temporary and proposed regulations under sections 163 and 1275 of the Code relate to the federal income tax treatment of reopenings of Treasury securities and other debt instruments. A public hearing is scheduled for March 22, 2000.

T.D. 8842, page 576.

Final regulations provide specific rules under section 1502 of the Code that apply to the acquisition of the stock of an S corporation by a member of a consolidated group. These rules eliminate the compliance burdens associated with filing a separate return for the day that an S corporation is acquired by a consolidated group. Additionally, the regulations clarify that section 1.1502– 76(c) continues to provide rules for filing the separate return for a corporation's items for the period not included in the consolidated return.

EMPLOYEE PLANS

Notice 99–54, page 579.

Weighted average interest rate update. Guidelines are set forth for determining for November 1999 the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code.

ADMINISTRATIVE

Rev. Proc. 99–43, page 579.

Interest netting for interest accruing before October 1, 1998. This procedure provides guidance on how to apply the net interest rate of zero in section 6621(d) of the Code to interest accruing before October 1, 1998, with respect to overlapping tax underpayments and tax overpayments. Rev. Proc. 99–19 modified and superseded.

Announcement 99–111, page 587.

This document corrects temporary and final regulations (T.D. 8827, 1999–30 I.R.B. 120) relating to the treatment under subpart F of certain payments involving branches of a controlled foreign corporation (CFC) that are treated as separate entities for foreign tax purposes or partnerships in which CFCs are partners. T.D. 8827 corrected.

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

Department of the Treasury
Internal Revenue Service

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Actions Relating to Court Decisions

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

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

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

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

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

The Commissioner ACQUIESCES in the following decision:

Conway v. Commissioner,[1]
111 T.C. 350 (1998)

The Commissioner does NOT ACQUIESCE in the following decision:

Duke Energy Natural Gas Corporation v. Commissioner,[2]
_F.3d_(10th Cir. 1999)

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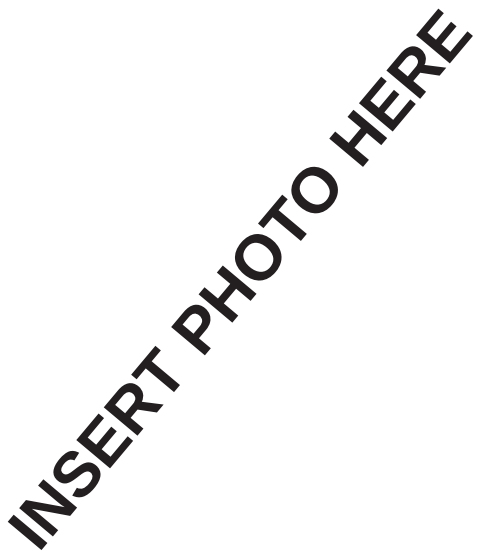
[1] Acquiescence relating to whether a taxpayer's partial surrender of an annuity contract and direct transfer of the resulting proceeds for the purchase of a new annuity qualifies as a nontaxable exchange under I.R.C. section 1035.

[2] Nonacquiescence relating to whether, for purposes of depreciation, a taxpayer engaged in the business of pipeline transmission of natural gas, who is not a producer of natural gas, must include gathering pipelines in assets class 46.0 Pipeline Transaction (15-year recovery period) or in class 13.2 Exploration for and Production of Petroleum Natural Gas Deposits (7-year recovery period).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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 1275.—Other Definitions and Special Rules

26 CFR 1.1275–2T: Special rules relating to debt instruments (temporary).

T.D. 8840

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Reopenings of Treasury Securities; Original Issue Discount

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the Federal income tax treatment of reopenings of Treasury securities. The temporary regulations change the definition of a qualified reopening. The text of the temporary regulations also serves as the text of the proposed regulations set forth in REG–115932–99 on page 583 of this Bulletin. The regulations in this document provide needed guidance to holders of reopened Treasury securities.

DATES: The regulations are effective November 5, 1999.

FOR FURTHER INFORMATION CONTACT: William E. Blanchard, (202) 622-3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Sections 163(e) and 1271 through 1275 of the Internal Revenue Code (Code) provide rules for the Federal income tax treatment of interest and original issue discount (OID). On February 2, 1994, final regulations relating to these sections of the Code (T.D. 8517, 1994–1 C.B. 38) were published in the **Federal Register** (59 F.R. 4799). Section 1.1275–2(d)(2) of the regulations provides rules for the treatment of certain reopenings of Treasury securities.

On January 6, 1997, temporary regulations relating to the Federal income tax treatment of inflation-indexed debt instruments (T.D. 8709, 1997–1 C.B. 167) were published in the **Federal Register** (62 F.R. 615). Section 1.1275–7T(g) of those temporary regulations provided rules for the treatment of certain reopenings of Treasury Inflation-Indexed Securities. On September 7, 1999, §1.1275–7T was redesignated as §1.1275–7 (T.D. 8838, 1999–38 I.R.B. 424 [64 F.R. 48545]).

Explanation of Provisions

The Secretary of the Treasury is authorized to issue Treasury securities, including Treasury Inflation-Indexed Securities, and to prescribe terms and conditions for their issuance and sale. The Treasury Department sells securities throughout the year.

In January 1992, the Treasury Department determined that it will be prepared to provide additional quantities of a security to the public when an acute, protracted shortage develops. These reopenings are necessary to preserve the integrity and efficient functioning of the market in Treasury securities. See Department of the Treasury, Securities and Exchange Commission, and Board of Governors of the Federal Reserve System, *Joint Report on the Government Securities Market* (January 1992).

In order to ensure that the original and additional Treasury securities are fungible, §1.1275–2(d) provides that the additional Treasury securities issued in a reopening are part of the same issue as the original Treasury securities if (1) the additional Treasury securities have the same terms as the original Treasury securities, (2) the additional Treasury securities are issued not more than 12 months after the original Treasury securities were first issued to the public, and (3) the additional Treasury securities are issued in a reopening intended to alleviate an acute, protracted shortage of the original Treasury securities (a qualified reopening). As a result, any discount generated upon the issuance of the additional Treasury securities in the reopening is market discount rather than OID.

Under §1.1275–7(g), a reopening of Treasury Inflation-Indexed Securities is a qualified reopening for purposes of §1.1275–2(d) even though the reopening is not intended to alleviate an acute, protracted shortage of the original Treasury securities.

For debt management and liquidity concerns, the Treasury Department has decided that it needs the ability to reopen an issue of Treasury securities within one year. Therefore, the temporary regulations in this document (§1.1275–2T) revise the rules for when a reopening is a qualified reopening by eliminating the acute, protracted shortage requirement. As a result, the Treasury Department can reopen an issue of outstanding Treasury securities at any time within 12 months after the issue date of the securities for any reason and the securities will be fungible for Federal income tax purposes.

The temporary regulations also revise the rules to determine the issue price and issue date of an issue of Treasury securities auctioned on or after November 2, 1998, to reflect changes in how Treasury securities are sold. On November 2, 1998, the Treasury Department switched from an average price auction to a single price auction for selling Treasury securities.

In response to comments, the IRS is proposing rules for reopenings of debt instruments other than Treasury securities. See the proposed rules in REG–115932–99 on page 583.

Special Analyses

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

Drafting Information

The principal author of the regulations is William E. Blanchard, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *
Section 1.1275–2T also issued under 26 U.S.C. 1275(d). * * *

Par. 2. Section 1.1271–0 is amended by:

1. Revising the entry for §1.1275–2(d) in paragraph (b).
2. Adding an entry for §1.1275–2T in numerical order in paragraph (b).
3. Revising the entry for §1.1275–7(g) in paragraph (b).

The revisions and additions read as follows:

§1.1271–0 Original issue discount; effective date; table of contents.

* * * * *

(b) * * *

* * * * *

§1.1275–2 Special rules relating to debt instruments.

* * * * *

(d) [Reserved]

* * * * *

§1.1275–2T Special rules relating to debt instruments (temporary).

(a) through (c) [Reserved]
(d) Special rules for Treasury securities.
(1) Issue price and issue date.
(2) Reopenings of Treasury securities.

* * * * *

§1.1275–7 Inflation-indexed debt instruments.

* * * * *

(g) [Reserved]

* * * * *

Par. 3. Section 1.1275–2 is amended by revising paragraph (d) to read as follows:

§1.1275–2 Special rules relating to debt instruments.

* * * * *

(d) [Reserved] For further guidance, see §1.1275–2T(d).

* * * * *

Par. 4. Section 1.1275–2T is added to read as follows:

§1.1275–2T Special rules relating to debt instruments (temporary).

(a) through (c) [Reserved] For further guidance, see §1.1275–2(a) through (c).

(d) *Special rules for Treasury securities*—(1) *Issue price and issue date*—(i) *In general.* The issue price of an issue of Treasury securities is the price of the securities sold at auction. In addition, the issue date of the issue is the first settlement date of a substantial amount of the securities.

(ii) *Treasury securities auctioned before November 2, 1998.* For an issue of Treasury securities auctioned before November 2, 1998, the issue price of the issue is the average price of the securities sold. In addition, the issue date of the issue is the first settlement date on which a substantial amount of the securities in the issue is sold.

(2) *Reopenings of Treasury securities*—(i) *Treatment of additional Treasury securities.* Additional Treasury securities issued in a qualified reopening are part of the same issue as the original Treasury securities and have the same issue price and issue date as the original Treasury securities. This paragraph (d)(2) applies to qualified reopenings that occur on or after March 25, 1992.

(ii) *Definitions*—(A) *Additional Treasury securities.* Additional Treasury securities are Treasury securities with terms that are in all respects identical to the terms of the original Treasury securities.

(B) *Original Treasury securities.* Original Treasury securities are securities comprising any issue of outstanding Treasury securities.

(C) *Qualified reopening.* A qualified reopening is a reopening that occurs not more than one year after the original Treasury securities were first issued to the public. For reopenings of Treasury securities (other than Treasury Inflation-Indexed Securities) that occur prior to November 5, 1999, a qualified reopening is a reopening of Treasury securities that satisfies the preceding sentence and that was intended to alleviate an acute, protracted shortage of the original Treasury securities.

§1.1275–7 [Amended]

Par. 5. Section 1.1275–7 is amended by removing and reserving paragraph (g).

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

Approved October 29, 1999.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on November 3, 1999, 8:45 a.m., and published in the issue of the Federal Register for November 5, 1999, 64 F.R. 60342)

Section 1502.—Regulations

26 CFR 1.1502–76: Taxable year of members of group.

T.D. 8842

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Acquisition of an S Corporation by a Member of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1502 of the Internal Revenue Code. These final regu-

lations provide specific rules that apply to the acquisition of the stock of an S corporation by a member of a consolidated group. These rules eliminate the compliance burdens associated with filing a separate return for the day that an S corporation is acquired by a consolidated group. Additionally, the regulations clarify the rules for the filing of the separate return for a corporation's items for the period not included in the consolidated return.

DATES: *Effective Date:* These regulations are effective November 10, 1999.

Applicability Date: For dates of applicability, see §1.1502–76(b)(6)(i).

FOR FURTHER INFORMATION CONTACT: Vincent Daly, (202) 622-7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On December 17, 1998, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–106219–98, 1999–9 I.R.B. 51 [63 F.R. 69581]), concerning acquisitions by a consolidated group of at least eighty percent of the stock of an S corporation. Although a comment was received questioning the advisability of a special rule for the acquisition of an S corporation, the IRS and Treasury have determined the rules are necessary to eliminate the administrative burden of filing a separate tax return for the day the S corporation is acquired. The proposed regulations are adopted by this Treasury decision.

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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations will provide administrative relief to small entities by removing the administrative burden of filing a separate one-day return currently required for certain acquisitions. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking 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 Jeffrey L. Vogel of the Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR 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 1.1362–3 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§1.1362–3 Treatment of S termination year.

(a) *In general.* * * * See, however, §1.1502–76(b)(1)(ii)(A)(*2*) for special rules for an S election that terminates under section 1362(d) immediately before the S corporation becomes a member of a consolidated group (within the meaning of §1.1502–1(h)).

* * * * *

Par. 3. Section 1.1502–76 is amended as follows:

1. The text of paragraph (b)(1)(ii)(A) following the paragraph heading is redesignated as paragraph (b)(1)(ii)(A)(*1*).

2. A paragraph heading for newly designated paragraph (b)(1)(ii)(A)(*1*) is added.

3. The first sentence of newly designated paragraph (b)(1)(ii)(A)(*1*) is revised.

4. Paragraph (b)(1)(ii)(A)(*2*) is added.

5. Paragraph (b)(2)(v) is redesignated as paragraph (b)(2)(vi).

6. New paragraph (b)(2)(v) is added.

7. Paragraphs (b)(4) and (b)(5) are redesignated as paragraphs (b)(5) and (b)(6), respectively.

8. New paragraph (b)(4) is added.

9. Newly designated paragraph (b)(5) is amended as follows:

a. *Example 6*(b), first sentence is revised.

b. *Example 6*(c), second sentence is revised.

c. *Example 7* is added.

10. Newly designated paragraph (b)(6)(i) is revised.

The revisions and additions read as follows:

§1.1502–76 Taxable year of members of group.

* * * * *

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

(ii) * * *(A) End of the day rule. (*1*) *In general.* If a corporation (S), other than one described in paragraph (b)(1)(ii)-(A)(*2*) of this section, becomes or ceases to be a member during a consolidated return year, it becomes or ceases to be a member at the end of the day on which its status as a member changes, and its tax year ends for all Federal income tax purposes at the end of that day. * * *

(*2*) *Special rule for former S corporations.* If S becomes a member in a transaction other than in a qualified stock purchase for which an election under section 338(g) is made, and immediately before becoming a member an election under section 1362(a) was in effect, then S will become a member at the beginning of the day the termination of its S corporation election is effective. S's tax year ends for all Federal income tax purposes at the end of the preceding day. This paragraph (b)(1)(ii)(A)(*2*) applies to transactions occurring after November 10, 1999.

* * * * *

(2) * * *

(v) *Acquisition of S corporation.* If a corporation is acquired in a transaction to which paragraph (b)(1)(ii)(A)(*2*) of this section applies, then paragraphs (b)(2)(ii) and (iii) of this section do not apply and items of income, gain, loss, deduction, and credit are assigned to each short taxable year on the basis of the corporation's normal method of accounting as deter-

mined under section 446. This paragraph (b)(2)(v) applies to transactions occurring after November 10, 1999.

* * * * *

(4) *Determination of due date for separate return.* Paragraph (c) of this section contains rules for the filing of the separate return referred to in this paragraph (b). In applying paragraph (c) of this section, the due date for the filing of S's separate return shall also be determined without regard to the ending of the tax year under paragraph (b)(1)(ii) of this section or the deemed cessation of its existence under paragraph (b)(2)(i) of this section.

(5) * * *

Example 6. Allocation of partnership items. * * *

(b) *Analysis.* Under paragraph (b)(2)(vi)(A) of this section, T is treated, solely for purposes of determining T's tax year in which the partnership's items are included, as selling or exchanging its entire interest in the partnership as of P's sale of T's stock. * * *

(c) *Controlled partnership.* * * * Under paragraph (b)(2)(vi)(B) of this section, T's distributive share of the partnership items is treated as T's items for purposes of paragraph (b)(2) of this section. * * *

Example 7. Acquisition of S corporation. (a) *Facts.* Z is a small business corporation for which an election under section 1362(a) was in effect at all times since Year 1. At all times, Z had only 100 shares of stock outstanding, all of which were owned by individual A. On July 1 of Year 3, P acquired all of the Z stock. P does not make an election under section 338(g) with respect to its purchase of the Z stock.

(b) *Analysis.* As a result of P's acquisition of the Z stock, Z's election under section 1362(a) terminates. See sections 1361(b)(1)(B) and 1362(d)(2). Z is required to join in the filing of the P consolidated return. See §1.1502–75. Z's tax year ends for all Federal income tax purposes on June 30 of Year 3. If no extension of time is sought, Z must file a separate return for the period from January 1 through June 30 of Year 3 on or before March 15 of Year 4. See paragraph (b)(4) of this section. Z will become a member of the P consolidated group as of July 1 of Year 3. See paragraph (b)(1)(ii)(A)(*2*) of this section. P group's Year 3 consolidated return will include Z's items from July 1 to December 31 of Year 3.

(6) *Effective date*—(i) *General rule.* Except as provided in paragraphs (b)(1)(ii)(A)(*2*) and (b)(2)(v) of this section, this paragraph (b) applies to corporations becoming or ceasing to be members of consolidated groups on or after January 1, 1995.

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Bob Wenzel,
Deputy Commissioner of Internal Revenue.

Approved October 29, 1999.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on November 9, 1999, 8:45 a.m., and published in the issue of the Federal Register for November 10, 1999, 64 F.R. 61205)

Section 6601.—Interest on Underpayment, Nonpayment, or Extensions of Time for Payment, of Tax

26 CFR 301.6601–1: Interest on underpayments.

How is the net interest rate of zero in section 6621(d) of the Code applied to interest accruing before October 1, 1998, with respect to overlapping tax underpayments and tax overpayments. See Rev. Proc. 99–43, page 579.

Section 6611.—Interest on Overpayments

26 CFR 301.6611–1: Interest on overpayments.

How is the net interest rate of zero in section 6621(d) of the Code applied to interest accruing before October 1, 1998, with respect to overlapping tax underpayments and tax overpayments. See Rev. Proc. 99–43, page 579.

Section 6621.—Determination of Rate of Interest

26 CFR 301.6621–1: Interest rate.

How is the net interest rate of zero in section 6621(d) of the Code applied to interest accruing before October 1, 1998, with respect to overlapping tax underpayments and tax overpayments. See Rev. Proc. 99–43, page 579.

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 99–54

Notice 88–73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for October 1999 is 6.26 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
November	1999	5.99	5.39 to 6.29	5.39 to 6.59

Drafting Information

The principal author of this notice is Todd Newman of the Employee Plans Division. For further information regarding this notice, call (202) 622-6076 between 2:30 and 3:30 p.m. Eastern time (not a toll-free number). Mr. Newman's number is (202) 622-8458 (also not a toll-free number).

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26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, sections 6601, 6611, 6621; 301.6601–1, 301.6611–1, 301.6621–1.)

Rev. Proc. 99–43

SECTION 1. PURPOSE

.01 *In general.* This revenue procedure provides guidance regarding the application of § 6621(d) of the Internal Revenue Code with respect to interest accruing before October 1, 1998, and modifies and supersedes Rev. Proc. 99–19, 1999–13 I.R.B. 10. Section 6621(d) was enacted by § 3301 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA), Pub. L. No. 105-206, 112 Stat. 741, and was amended by § 4002(d) of the Tax and Trade Relief Extension Act of 1998, Pub. L. No. 105-277, 112 Stat. 2681. Section 6621(d) provides for a net interest rate of zero to the extent of overlapping tax underpayments and tax overpayments, and generally applies to interest for periods beginning after July 22, 1998 (*i.e.*, interest accruing on or after October 1, 1998). However, the net interest rate of zero in § 6621(d) also applies to interest for periods beginning before July 22, 1998 (*i.e.*, interest accruing before October 1, 1998), provided certain conditions (described in section 4.01 of this revenue procedure) are met. Among these conditions is a requirement that a taxpayer request the application of § 6621(d) by December 31, 1999. This revenue procedure provides guidance on, and discusses how to comply with, those conditions.

.02 *Comments received in response to Rev. Proc. 99–19.* In Rev. Proc. 99–19, the Service asked for comments regarding what taxpayers should be required to submit to the Service by December 31, 1999, when taxpayers cannot provide a final computation on the application of the net rate of zero by that date. Commentators made recommendations regarding the amount of information that would be sufficient to make a request by December 31, 1999, that would reasonably identify and establish overlapping periods. Commentators also suggested that taxpayers should not be required to take any action by December 31, 1999, if taxpayers could not reasonably identify and establish overlapping periods by that date. In response to these comments, this revenue procedure provides that:

(1) taxpayers must file a claim requesting application of the net rate of zero by December 31, 1999, only if both applicable periods of limitation (as described in sections 4.02(1) and 4.02(2) of this revenue procedure) will be closed on or before December 31, 1999 (section 4.03(1)); and

(2) taxpayers need not take any action by December 31, 1999, if at least one of the applicable periods of limitation (as described in sections 4.02(1) and 4.02(2) of this revenue procedure) will be open after December 31, 1999; such taxpayers must file a claim requesting application of the net rate of zero on or before the date on which the last applicable period of limitation closes (section 4.03(2)).

.03 *Modification to Rev. Proc. 99–19 regarding application procedures.* Claims requesting the application of the net rate of zero:

(1) should be sent to a specific address (section 5.02);

(2) should be specifically labeled (section 5.03); and

(3) should generally be made using a computation that reduces underpayment interest, except as otherwise expressly provided (section 5.04(5)(f)).

SECTION 2. BACKGROUND

.01 *Interest computations in general.*

(1) Section 6601(a) provides, in general, that if any amount of tax imposed by the Code is not paid on or before the last date prescribed for payment, interest on such amount must be paid for the period from such last date to the date paid at the underpayment rate established under § 6621.

(2) Section 6611(a) provides that interest must be allowed and paid on any overpayment in respect of any internal revenue tax at the overpayment rate established under § 6621. Section 6611(b)(1) provides that, in the case of a credit, interest must be allowed and paid from the date of

the overpayment to the due date of the amount against which the credit is taken. Section 6611(b)(2) provides that, in the case of a refund, interest must be allowed and paid from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days.

.02 *Interest rates in general.*

(1) For interest accruing before January 1, 1999, § 6621(a)(1) provides that the overpayment rate is the federal short-term rate (determined under § 6621(b)) plus 2 percentage points. To the extent that an overpayment of tax by a corporation exceeds $10,000, the overpayment rate is the federal short-term rate plus 0.5 percent.

(2) Section 6621(a)(2) provides that the underpayment rate is the federal short-term rate (determined under § 6621(b)) plus 3 percentage points. Special rules in § 6621(c) increase the underpayment rate on large corporate underpayments by an additional 2 percentage points.

.03 *Interest for overlapping periods.*

(1) Section 6621(d), as enacted by the RRA on July 22, 1998, provides that, to the extent that for any period interest is payable under subchapter A (§§ 6601 and 6602) and allowable under subchapter B (§ 6611) on equivalent underpayments and overpayments by the same taxpayer of tax imposed by the Code, the net rate of interest under § 6621 on such amounts is zero for such period.

(2) The Conference Report, H. R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 257 (1998), accompanying the RRA provides that the net interest rate of zero is applied without regard to whether the overpayment or underpayment is currently outstanding. Further, each overpayment or underpayment is considered only once in determining whether equivalent amounts of overpayment and underpayment overlap for a particular period. That report also provides that the net interest rate of zero applies even when special rules increase the rate of interest for large corporate underpayments under § 6621(c), or decrease the rate of interest for large corporate overpayments under § 6621(a).

SECTION 3. SCOPE

.01 *Applicability.* This revenue procedure applies to the application of the net interest rate of zero in § 6621(d) to interest for periods beginning before July 22, 1998 (*i.e.*, interest accruing before October 1, 1998), provided:

(1) both applicable periods of limitation described in sections 4.02(1) and 4.02(2) of this revenue procedure were open on July 22, 1998;

(2) the periods of tax overpayments and underpayments for which the net interest rate of zero applies are reasonably identified and established (as described in section 5 of this revenue procedure); and

(3) the request is made not later than as described in section 4.03 of this revenue procedure.

.02 *Inapplicability.* This revenue procedure does not apply to:

(1) the application of the net interest rate of zero in § 6621(d) to interest for periods beginning after July 22, 1998 (*i.e.*, interest accruing on or after October 1, 1998). The Service intends to provide further guidance for those periods;

(2) an overpayment or underpayment for any period during which interest on the overpayment or underpayment was not allowable or payable by law (*e.g.*, the 45-day interest disallowance rule under § 6611(e)); or

(3) to the extent of an offset made pursuant to §§ 6402(a) and 6601(f), regarding the crediting of an outstanding overpayment against an outstanding underpayment.

SECTION 4. SPECIAL EFFECTIVE DATE RULE

.01 *Special Rule.* Section 6621(d) generally applies to interest for periods (calendar quarters) beginning after July 22, 1998 (*i.e.*, interest accruing on or after October 1, 1998). *See* H. R. Rep. No. 364 (Part 1), 105th Cong., 1st Sess. 64 (1998); S. Rep. No. 174, 105th Cong., 2d Sess. 62 (1998); H. R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 257 (1998). However, § 3301(c)(2) of the RRA provides that § 6621(d) applies to interest for periods beginning before July 22, 1998 (*i.e.*, interest accruing before October 1, 1998), provided certain conditions are met. First, both periods of limitation applicable to the tax underpayment and to the tax overpayment (as described in section 4.02 of this revenue procedure) must have been open on July 22, 1998. Second, the taxpayer must:

(a) reasonably identify and establish periods of tax overpayments and underpayments for which the net interest rate of zero applies, and

(b) not later than December 31, 1999, request the Secretary of the Treasury to apply § 6621(d) to such periods.

.02 *Applicable periods of limitation.* The applicable periods of limitation are as follows:

(1) *Underpayment interest.* A claim for credit or refund of interest paid on an underpayment pursuant to § 6601 or 6602 generally must be filed within 3 years from the time the tax return was filed or 2 years from the time the interest was paid, whichever period expires later, pursuant to § 6511.

(2) *Overpayment interest.* A claim for payment of additional interest allowable on an overpayment pursuant to § 6611 must be filed within the 6-year period in which a suit must be filed pursuant to 28 U.S.C. §§ 2401 and 2501. *See* Rev. Rul. 56–506, 1956–2 C.B. 959.

(3) *Claims filed on or before December 31, 1999.* If both applicable periods of limitation described in sections 4.02(1) and 4.02(2) of this revenue procedure were open on July 22, 1998, and both close on or before December 31, 1999, a claim requesting the application of the net interest rate of zero (as described in sections 5.01 through 5.04 of this revenue procedure) will be considered timely if filed on or before December 31, 1999.

.03 *Requirement to make a request by December 31, 1999.* A taxpayer will satisfy the requirement in the special rule to make a request for the application of the net rate of zero not later than December 31, 1999, as follows:

(1) If both applicable periods of limitation described in sections 4.02(1) and 4.02(2) of this revenue procedure were open on July 22, 1998, but both will be closed on or before December 31, 1999, the taxpayer must file a claim requesting the application of the net rate of zero (as described in sections 5.01 through 5.04 of this revenue procedure) on or before December 31, 1999.

(2) If both applicable periods of limitation described in sections 4.02(1) and 4.02(2) of this revenue procedure were open on July 22, 1998, and at least one of the applicable periods of limitation will be open after December 31, 1999, the tax-

payer need not take any action on or before December 31, 1999. In order to obtain the net rate of zero, the taxpayer must file a claim requesting application of the net rate of zero (as described in sections 5.01 through 5.04 of this revenue procedure) or make a written request (as described in section 5.06 of this revenue procedure) on or before the date on which the last applicable period of limitation closes.

.04 *Net Rate of Zero.* In general, the Service will apply the net rate of zero as follows:

(1) If the period of limitation for refunding underpayment interest (as described in section 4.02(1) of this revenue procedure) is open at the time a claim (as described in sections 5.01 through 5.04 of this revenue procedure) is filed or a written request (as described in section 5.06 of this revenue procedure) is made, the Service will apply the net rate of zero by decreasing underpayment interest owed by the taxpayer.

(2) Except as provided in 4.04(3) of this revenue procedure, if the period of limitation for refunding underpayment interest (as described in section 4.02(1) of this revenue procedure) is closed at the time a claim (as described in sections 5.01 through 5.04 of this revenue procedure) is filed or a written request (as described in section 5.06 of this revenue procedure) is made, but the period for paying additional overpayment interest (as described in section 4.02(2) of this revenue procedure) is open, the Service will apply the net rate of zero by increasing overpayment interest owed to the taxpayer.

(3) If both applicable periods of limitation (as described in sections 4.02(1) and 4.02(2) of this revenue procedure) are open on July 22, 1998, and a claim requesting the application of the net interest rate of zero (as described in sections 5.01 through 5.04 of this revenue procedure) is filed on or before December 31, 1999, the Service will apply the net rate of zero by decreasing underpayment interest owed by the taxpayer.

SECTION 5. PROCEDURES FOR REQUESTING THE NET RATE OF ZERO

.01 *Form to file.* Except as provided in section 5.06 of this revenue procedure, requests for the application of the net interest rate of zero in § 6621(d) to interest accruing before October 1, 1998, should be made on Form 843, Claim for Refund and Request for Abatement.

.02 *Where to file.* A Form 843 requesting the net rate of zero should be sent to the following address:

Internal Revenue Service
Net Rate Interest Netting Claim
P.O. Box 9987
Mail Stop 6800
Ogden, UT 84409

or, if sent by other than U. S. mail, to the following address:

Internal Revenue Service
Net Rate Interest Netting Claim
1160 West 1200 South
Mail Stop 6800
Ogden, UT 84201

.03 *Label.* The taxpayer should label the top of the Form 843: "Request for Net Interest Rate of Zero Under Rev. Proc. 99–43."

.04 *Filing requirements for Form 843.*

(1) Line 1 should be left blank.

(2) The taxpayer may, but is not required to, place a dollar amount on Line 2.

(3) Line 3 should indicate the type of tax and type of return covered by the request. More than one box may be checked if more than one type of tax or return is covered by the request. In addition, any taxes imposed by the Code (or returns for those taxes) for which there is no box on Line 3 should be written in on that line.

(4) Line 4 should be left blank.

(5) Line 5 should:

(a) identify the taxable periods for which the taxpayer overpaid and underpaid its tax liability. A separate Form 843 is not required for each separate taxable period involved in the request;

(b) state when the taxpayer paid the tax if the underpayment is no longer outstanding;

(c) state when the taxpayer received a refund of tax if the overpayment is no longer outstanding;

(d) identify and establish the period(s) for which the taxpayer's overpayment and underpayment overlapped and the overlapping amount. For this purpose, the taxpayer should provide any background material (such as copies of examination reports, notices, or prior interest computations provided by the Service) relating to the overpayments and underpayments. The background material is needed to assist the Service in determining the period(s) for which the overpayment and underpayment overlap, and the amount of such overlap;

(e) state that, to the extent of equivalent amounts of underpayment and overpayment for the period(s) identified and established under section 5.04(5)(d) of this revenue procedure, the period(s) has (have) been used only once in a request to obtain the net interest rate of zero under § 6621(d); however, if the full amount of the overpayment or underpayment is not used in a netting calculation, the remaining portion may be used in another netting calculation; and

(f) provide a computation, to the extent possible, of the amount of interest to be credited, refunded, or abated to provide a net interest rate of zero for the period(s) of overlap. This computation generally should be made by applying 6621(d) to reduce the taxpayer's underpayment interest payable to the Service. However, if the Form 843 is filed after December 31, 1999, and only the period of limitation for claiming additional overpayment interest is open on that filing date, the computation should be made by applying § 6621(d) to increase the taxpayer's overpayment interest payable by the Service.

.05 *Verification.* The amounts used in a computation provided under section 5.04(5)(f) of this revenue procedure are subject to verification by the Service and may be subject to adjustment for purposes of computing the net interest rate of zero pursuant to § 6621(d).

.06 *Special procedure.* No Form 843 is required when a computation of interest using the net interest rate of zero under § 6621(d) for interest accruing before October 1, 1998, is requested by a taxpayer in connection with a return (or returns) of the taxpayer under consideration by any function of the Service (including Examination, Appeals, or a case before a federal court that requires a computation of interest by any function of the Service). Rather than filing a Form 843, the taxpayer must furnish a letter or written statement to such function that:

(1) states that the taxpayer is requesting the net interest rate of zero under § 6621(d);

(2) indicates the type of tax and type of return that affects the interest computation for the taxable period under consideration;

(3) states when and for what period(s) the refund or payment (that affects the interest computation for the taxable period under consideration) was made; and

(4) states that, to the extent of equivalent amounts of overpayment or underpayment, the period(s) set forth under section 5.06(3) of this revenue procedure has (have) not previously been applied to obtain a net interest rate of zero under § 6621(d).

.07 *Special procedure verification.* The refund or payment provided under section 5.06(3) of this revenue procedure is subject to verification by the Service and may be subject to adjustment for purposes of computing the net interest rate of zero pursuant to § 6621(d).

SECTION 6. EXAMPLES

.01 *Example 1. X* is a calendar year corporation. The Service examined *X*'s Form 1120, Corporation Income Tax Return, for the 1992 and 1994 taxable years. For the 1994 taxable year, the Service determined that *X* was entitled to a refund of $30,000. This Service-initiated refund was made on September 21, 1997, with interest computed from March 15, 1995, to July 29, 1997. For the 1992 taxable year, the Service determined that *X* underpaid its income tax by $80,000. The Service sent *X* a notice and demand for payment dated May 3, 1998, which *X* paid on May 12, 1998, with interest computed from March 15, 1993, to May 3, 1998. On July 22, 1998, both the 6-year period of limitation for claiming additional overpayment interest on *X*'s 1997 refund and the 2-year period of limitation for claiming a refund of underpayment interest paid in 1998 were open. On December 27, 1999, *X* files a Form 843 requesting the net interest rate of zero under § 6621(d) for the overlap period from March 15, 1995, to July 29, 1997. The Service will refund underpayment interest to *X* in an amount equal to the difference between the underpayment interest paid on $30,000 for the period from March 15, 1995, to July 29, 1997, and the overpayment interest computed and paid on $30,000 for that period.

.02 *Example 2.* The facts are the same as in *Example 1,* except that the Service sent *X* a notice and demand for payment dated May 3, 1996, which *X* paid on May 12, 1996, with interest computed from March 15, 1993, to May 3, 1996. On December 27, 1999, *X* files a Form 843 requesting the application of § 6621(d) for the overlap period from March 15, 1995, to May 3, 1996. On July 22, 1998, the 6-year period of limitation for claiming additional overpayment interest on *X*'s 1997 refund was open, but the 2-year period of limitation for claiming a refund of underpayment interest paid in 1996 was not open. Therefore, the net interest rate of zero under § 6621(d) does not apply to the overlap period and no adjustment will be made.

.03 *Example 3. Y* is a calendar year corporation. The Service examined *Y*'s Form 1120, Corporation Income Tax Return, for the 1990 and 1992 taxable years. For the 1990 taxable year, the Service determined that *Y* was entitled to a refund of $40,000. The Service-initiated refund was made on November 21, 1993, with interest computed from March 15, 1991, to September 28, 1993. For the 1992 taxable year, the Service determined that *Y* underpaid its income tax by $60,000. The Service sent *Y* a notice and demand for payment dated October 3, 1996, which *Y* paid on October 12, 1996, with interest computed from March 15, 1993, to October 3, 1996. On July 22, 1998, both the 6-year period of limitation for claiming additional overpayment interest on *Y*'s 1993 refund and the 2-year period of limitation for claiming a refund of underpayment interest paid in 1996 were open. However, both of these periods of limitation will be closed before December 31, 1999. *Y* files a Form 843 after both these periods close and on or before December 31, 1999, requesting the net interest rate of zero under § 6621(d) for the overlap period from March 15, 1993, to September 28, 1993. The Service will refund underpayment interest to *Y* in an amount equal to the difference between the underpayment interest paid on $40,000 for the period from March 15, 1993, to September 28, 1993, and the overpayment interest computed and paid on $40,000 for that period.

.04 *Example 4.* The facts are the same as in *Example 3* except that the Service-initiated refund was made on November 21, 1994, with interest computed from March 15, 1991, to September 28, 1994. On December 31, 1999, the 6-year period of limitation for claiming additional overpayment interest will be open, but the 2-year period of limitation for claiming a refund of underpayment interest paid in 1996 will not be open. After December 31, 1999, but on or before the close of the 6-year period of limitation for claiming additional overpayment interest on *Y*'s 1994 refund, *Y* files a Form 843 requesting the net interest rate of zero under § 6621(d) for the overlap period from March 15, 1993, to September 28, 1994. The Service will pay additional overpayment interest to *Y* in an amount equal to the difference between the underpayment interest paid on $40,000 for the period from March 15, 1993, to September 28, 1994, and the overpayment interest computed and paid on $40,000 for that period.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for taxpayer requests made for the application of the net interest rate of zero in § 6621(d) to interest accruing before October 1, 1998.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 99–19 is modified and superseded; however, the procedures in Revenue Procedure 99–19 will remain effective for any taxpayer requests for the application of the net interest rate of zero in § 6621(d) to interest accruing before October 1, 1998, made prior to November 22, 1999.

DRAFTING INFORMATION

The principal author of this revenue procedure is John J. McGreevy of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. McGreevy on (202) 622-4910 (not a toll- free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Reopenings of Treasury Securities and Other Debt Instruments; Original Issue Discount

REG–115932–99

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations, notice of proposed rulemaking, and notice of public hearing.

SUMMARY: This document proposes, by cross-reference to temporary regulations in T.D. 8840, amendments to the final regulations concerning the federal income tax treatment of certain reopenings of Treasury securities. In the temporary regulations in T.D. 8840, on page 575 of this Bulletin, remove the requirement that the issuance of the Treasury securities in the reopening must be intended to alleviate an acute, protracted shortage of the original securities. The text of the temporary regulations also serves as the text of the proposed regulations. This document also contains proposed regulations that would provide guidance on the Federal income tax treatment of reopenings of debt instruments other than Treasury securities. The proposed regulations would provide guidance to holders and issuers of debt instruments. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written and electronic comments must be received by February 3, 2000. Requests to appear and outlines of topics to be discussed at the public hearing scheduled for March 22, 2000, at 10 a.m., must be received by March 1, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–115932–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–115932–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. A public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, William E. Blanchard, (202) 622-3950; concerning submissions and the hearing, Michael L. Slaughter, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in T.D. 8840, page 575, amend the Income Tax Regulations (26 CFR part 1) relating to section 1275 of the Internal Revenue Code (Code). The temporary regulations provide rules for qualified reopenings of Treasury securities. See §1.1275–2T(d).

This document also proposes new rules under sections 163(e) and 1275 of the Code for qualified reopenings of debt instruments other than Treasury securities.

Explanation of Provisions

Reopenings of Treasury Securities.

The text of the temporary regulations (§1.1275–2T(d)) also serves as the text of the proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Reopenings of Debt Instruments Other Than Treasury Securities.

A. In General.

Over the past few years, a number of issuers have developed programs or practices where debt instruments with identical terms and CUSIP numbers are sold subsequent to their original issue date. These subsequent sales are often called "reopenings." The original issue discount (OID) rules generally accommodate reopenings during periods of stable or falling market interest rates. As is explained in more detail below, during periods of rising market interest rates, the OID rules can effectively prohibit reopenings. The proposed regulations in this document would modify the OID rules to accommodate certain qualified reopenings.

Under §1.1275–1(f), two or more debt instruments are part of the same issue if they have the same payment and credit terms and are sold reasonably close in time either pursuant to a common plan or as part of a single transaction or series of related transactions. Usually, there is little doubt as to what constitutes an issue because all of the relevant debt instruments have identical terms, have the same CUSIP number, and are sold on the same day. When the third condition is not met, however, there is a question as to whether the subsequently sold debt instruments are part of the original issue or are themselves a new issue.

This question—whether the subsequently sold debt instruments are part of the original issue—has important tax consequences. If the subsequently sold debt instruments are considered part of the original issue, they have OID only to the extent the debt instruments in the original issue have OID. Thus, if the original debt instruments were issued without OID, the subsequently sold debt instruments also do not have OID. In this case, any discount on the subsequently sold debt instruments generally is market discount, not OID. Conversely, if the subsequently sold debt instruments are a separate issue for tax purposes, any discount that arises as part of their issuance is OID if it equals or exceeds the OID *de minimis* amount for the debt instruments. See §1.1273–1(d) to determine the *de minimis* amount.

The holder and issuer have different tax consequences depending upon whether the discount is characterized as OID or market discount. For the holder, the primary difference is whether the holder has to include the discount in income on a current basis as it accrues. If it is OID, the holder must include the accruals in income currently; if it is market discount, the holder generally does not have to in-

clude discount in income until the debt instrument is disposed of or redeemed. The issuer's tax consequences also depend on whether the discount is OID or market discount. If the subsequently sold debt instruments are part of a separate issue and if the discount is OID, the issuer (or a broker or middleman) generally is required to make OID information reports for these debt instruments. See §1.6049–5. To comply with this reporting obligation, the issuer must be able to distinguish the subsequently sold debt instruments (which require OID information reports) from the originally sold debt instruments. As a practical matter, the only way the subsequently sold debt instruments can be distinguished is if they are assigned new CUSIP numbers. The assignment of new CUSIP numbers prevents the debt instruments from being fungible and, thereby, defeats the purpose of the reopening.

B. Qualified Reopenings.

This document proposes new qualified reopening rules. Under these rules, additional debt instruments sold in a qualified reopening would be part of the same issue as the original debt instruments. As a result, the additional debt instruments would have the same issue date, the same issue price, and (with respect to holders) the same adjusted issue price as the original debt instruments.

A qualified reopening would be a reopening of original debt instruments that meets the following conditions: (1) The original debt instruments are publicly traded; (2) The issue date of the additional debt instruments (treated as a separate issue) is not more than 6 months after the issue date of the original debt instruments; (3) Seven days before the date on which the price of the additional debt instruments is established, the yield of the original debt instruments (based on their fair market value) is not more than 107.5 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a *de minimis* amount of OID, the coupon rate); and (4) The yield of the additional debt instruments (based on the sales price of the additional debt instruments) is not more than 115 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a *de minimis* amount of OID, the coupon rate).

A qualified reopening also would include a reopening of original debt instruments if the first two conditions described above are met and the additional debt instruments (treated as a separate issue) were issued with no more than a *de minimis* amount of OID. A qualified reopening, however, would not include a reopening of tax-exempt obligations or contingent payment debt instruments.

The qualified reopening rules attempt to strike a balance between tax policy concerns about the conversion of OID into market discount and the need to have the tax rules reflect current capital market practices. The IRS and the Treasury Department believe the appropriate balance is to provide reopening rules for situations where the issuer can prove by objective, market-based information that the reopening will convert, at most, only a small amount of OID into market discount. To clearly and accurately measure the conversion benefit across different interest rate environments and debt instrument terms, the proposed regulations use a yield-based standard. The 107.5 percent standard was designed to give some relief to the reopening of relatively short-term issues (that is, issues with a remaining term of 10 years or less). These issues tend to be the most impacted by the OID *de minimis* rule standard.

The two yield-based rules are designed to work in tandem. The 107.5 percent of yield restriction is tested 7 days before the anticipated pricing date. This rule is designed to give the issuer a preliminary indication that its reopening will be a qualified reopening prior to the issuer's announcement of the reopening. Importantly, this preliminary indication is not controlling. Absent the 115 percent rule, if market interest rates were to move sharply upward in the week between the announcement date and the pricing date, the reopened debt instruments would go out with a significant amount of market discount (instead of OID) notwithstanding the fact that seven days before the pricing date the instruments satisfied the 107.5 percent rule. In this presumably rare and unusual case, the tax policy concern of converting a significant amount of OID into market discount becomes relatively more important. The proposed regulations, therefore, limit the total amount of discount that can be converted into market discount with the 115 percent rule.

C. Definition of Issue.

The proposed regulations also change the definition of *issue* that is currently in §1.1275–1(f) of the final OID regulations (described above). Essentially, the proposed regulations limit the "reasonably close in time" standard of current law to 13 days. The IRS and the Treasury Department believe that reopenings should be done through the proposed qualified reopening rule (discussed above), not through an expansive interpretation of the regulatory definition of issue. The 13-day limitation was chosen to prevent an issuer that comes to market every two weeks from stretching the definition of issue to cover two consecutive market sales. If an issuer wants to reopen more than 13 days after the initial offering, the sole test should be whether the reopening qualifies under the proposed qualified reopening rules.

D. Issuer's Treatment.

This document also proposes rules that clarify the issuer's treatment of the debt instruments comprising an issue when there is a qualified reopening. The proposed regulations require the issuer to take into account, as an adjustment to its interest expense, any difference between the amounts paid by the holders to acquire the additional debt instruments issued in the qualified reopening and the adjusted issue price of the original debt instruments. This difference would either increase or decrease the aggregate adjusted issue prices of all of the debt instruments in the issue (both original and additional) with respect to the issuer (but not the holder). The issuer would then, as of the reopening date, recompute the yield of the debt instruments in the issue based on this aggregate adjusted issue price and the remaining payment schedule of the debt instruments. The issuer would use this redetermined yield for purposes of applying the constant yield method to determine its accruals of interest expense over the remaining term of the debt instruments in the issue.

During the consideration of the issuer's treatment of the additional debt instruments, a question arose as to whether the

issuer's all-in-cost-of-capital should be used to determine the issuer's interest expense for a particular borrowing. Under current law, the costs of anticipatory hedges and bond issuance costs (such as underwriter fees) are not treated as interest expense even though they affect the issuer's cost of acquiring funds (the issuer's all-in-cost-of-capital). The IRS and the Treasury Department request comments on whether the issuer's all-in-cost-of-capital should be used to determine the issuer's interest expense for a particular borrowing.

E. Proposed Effective Dates.

Section 1.163–7(e) of the proposed regulations would apply to qualified reopenings where the reopening date is on or after the date that is 60 days after the date final regulations are published in the **Federal Register.** Section 1.1275–2(k) of the proposed regulations would apply to debt instruments that are part of a reopening where the reopening date is on or after the date that is 60 days after the date final regulations are published in the **Federal Register.**

The proposed revision to the definition of the term *issue* would apply to debt instruments whose issue date is on or after the date that is 60 days after the date final regulations are published in the **Federal Register.** For debt instruments issued prior to the effective date of the regulations, no inference is intended as to how the term *issue* should be interpreted under the current final regulations.

Special Analyses

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

Comments and Public Hearing

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

A public hearing has been scheduled for March 22, 2000, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identifications to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments by February 3, 2000, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 1, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is William E. Blanchard, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.163-7 is amended by:

1. Redesignating paragraph (e) as paragraph (f).

2. Adding a new paragraph (e).

3. Revising newly designated paragraph (f).

The revision and addition read as follows:

§1.163–7 Deduction for OID on certain debt instruments.

* * * * *

(e) *Qualified reopening*—(1) *In general.* In a qualified reopening of an issue of debt instruments, if a holder pays more or less than the adjusted issue price of the original debt instruments to acquire an additional debt instrument, the issuer treats this difference as an adjustment to the issuer's interest expense for the original and additional debt instruments. As provided by paragraphs (e)(2) through (e)(5) of this section, the adjustment is taken into account over the term of the instrument using constant yield principles.

(2) *Positive adjustment.* If the difference is positive (that is, the holder pays more than the adjusted issue price of the original debt instrument), then, with respect to the issuer but not the holder, the difference increases the aggregate adjusted issue prices of all of the debt instruments in the issue, both original and additional.

(3) *Negative adjustment.* If the difference is negative (that is, the holder pays less than the adjusted issue price of the original debt instrument), then, with respect to the issuer but not the holder, the difference reduces the aggregate adjusted issue prices of all of the debt instruments in the issue, both original and additional.

(4) *Determination of issuer's interest accruals.* As of the reopening date, the issuer must redetermine the yield of the debt instruments in the issue for purposes of applying the constant yield method described in §1.1272–1(b) to determine the

issuer's accruals of interest expense over the remaining term of the debt instruments in the issue. This redetermined yield is based on the aggregate adjusted issue prices of the debt instruments in the issue (as determined under this paragraph (e)) and the remaining payment schedule of the debt instruments in the issue. If the aggregate adjusted issue prices of the debt instruments in the issue (as determined under this paragraph (e)) are less than the aggregate stated redemption price at maturity of the instruments (determined as of the reopening date) by a *de minimis* amount (within the meaning of §1.1273–1(d)), the issuer may use the rules in paragraph (b) of this section to determine the issuer's accruals of interest expense.

(5) *Effect of adjustments on issuer's adjusted issue price.* The adjustments made under this paragraph (e) are taken into account for purposes of determining the issuer's adjusted issue price under §1.1275–1(b).

(6) *Definitions.* The terms *additional debt instrument, original debt instrument, qualified reopening,* and *reopening date* have the same meanings as in §1.1275–2(k).

(f) *Effective dates.* This section (other than paragraph (e) of this section) applies to debt instruments issued on or after April 4, 1994. Taxpayers, however, may rely on this section (other than paragraph (e) of this section) for debt instruments issued after December 21, 1992, and before April 4, 1994. Paragraph (e) of this section applies to qualified reopenings where the reopening date is on or after the date that is 60 days after the date final regulations are published in the **Federal Register.**

Par. 3. In §1.1275–1, paragraph (f) is revised to read as follows:

§1.1275–1 Definitions.

* * * * *

(f) *Issue*—(1) *Definition.* Two or more debt instruments are part of the same issue if the debt instruments—

(i) Have the same credit and payment terms;

(ii) Are issued either pursuant to a common plan or as part of a single transaction or a series of related transactions; and

(iii) Are issued within a period of 13 days beginning with the date on which the first debt instrument that would be part of the issue is issued to a person other than a bond house, broker, or similar person or organization acting in the capacity of an underwriter, placement agent, or wholesaler.

(2) *Cross-references for reopening and aggregation rules.* See §1.1275–2(d) and (k) for rules that treat debt instruments issued in certain reopenings as part of an issue of original (outstanding) debt instruments. See §1.1275–2(c) for rules that treat two or more debt instruments as a single debt instrument.

(3) *Effective date.* This paragraph (f) applies to debt instruments whose issue date is on or after the date that is 60 days after the date final regulations are published in the **Federal Register.**

* * * * *

Par. 4. In §1.1275-2, paragraph (d) is revised and paragraph (k) is added to read as follows:

§1.1275–2 Special rules relating to debt instruments.

* * * * *

(d) [The text of this proposed paragraph (d) is the same as the text of §1.1275–2T(d) published in T.D. 8840.]

* * * * *

(k) *Reopenings*—(1) *In general.* Notwithstanding §1.1275–1(f), additional debt instruments issued in a qualified reopening are part of the same issue as the original debt instruments. As a result, the additional debt instruments have the same issue date, the same issue price, and (with respect to holders) the same adjusted issue price as the original debt instruments.

(2) *Definitions*—(i) *Original debt instruments.* Original debt instruments are debt instruments comprising any single issue of outstanding debt instruments. For purposes of determining whether a particular reopening is a qualified reopening, debt instruments issued in prior qualified reopenings are treated as original debt instruments and debt instruments issued in the particular reopening are not so treated.

(ii) *Additional debt instruments.* Additional debt instruments are debt instruments that, without the application of this paragraph (k)—

(A) Are part of a single issue of debt instruments;

(B) Are not part of the same issue as the original debt instruments; and

(C) Have terms that are in all respects identical to the terms of the original debt instruments as of the reopening date.

(iii) *Reopening date.* The reopening date is the issue date of the additional debt instruments (determined without the application of this paragraph (k)).

(iv) *Qualified reopening.* A qualified reopening is a reopening of original debt instruments (other than tax-exempt obligations, as defined in section1275(a)(3), and contingent payment debt instruments, within the meaning of §1.1275–4) that meets all of the following conditions:

(A) The original debt instruments are publicly traded (within the meaning of §1.1273–2(f)).

(B) The reopening date of the additional debt instruments is not more than 6 months after the issue date of the original debt instruments.

(C) The debt instruments satisfy either the test described in paragraph (k)(3) of this section or the test described in paragraph (k)(4) of this section.

(3) *Yield test.* For purposes of paragraph (k)(2)(iv)(C) of this section—

(i) Seven days before the date on which the price of the additional debt instruments is established, the yield of the original debt instruments (based on their fair market value) is not more than 107.5 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a *de minimis* amount of OID, the coupon rate); and

(ii) The yield of the additional debt instruments (based on the sales price of the additional debt instruments) is not more than 115 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a *de minimis* amount of OID, the coupon rate).

(4) *De minimis OID test.* For purposes of paragraph (k)(2)(iv)(C) of this section, the additional debt instruments are issued with no more than a *de minimis* amount of OID (determined without the application of this paragraph (k)).

(5) *Special rule for Treasury reopenings.* See paragraph (d) of this section for special rules for reopenings of Treasury securities.

(6) *Issuer's treatment of a qualified reopening.* See §1.163–7(e) for the issuer's treatment of the debt instruments that are part of a qualified reopening.

(7) *Effective date.* This paragraph (k) applies to debt instruments that are part of a reopening where the reopening date is on or after the date that is 60 days after the date final regulations are published in the **Federal Register.**

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

(Filed by the Office of the Federal Register on November 3, 1999, 8:45 a.m., and published in the issue of the Federal Register for November 5, 1999, 64 F.R. 60395)

Removal of Regulations Providing Guidance Under Subpart F, Relating to Partnerships and Branches; Correction

Announcement 99–111

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction of temporary and final regulations.

SUMMARY: This document contains corrections to the temporary and final regulations (T.D. 8827, 1999–30 I.R.B. 120), which were published in the **Federal Register** on Tuesday, July 13, 1999, (64 F.R. 37677). The regulations relate to the treatment under subpart F of certain payments involving branches of a controlled foreign corporation that are treated as separate entities for foreign tax purposes or partnerships in which CFCs are partners.

DATES: These corrections are effective July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Valerie Mark, (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary and final regulations that are the subject of these corrections are under sections 904, 954, and 7701.

Need for Correction

As published, the temporary and final regulations (T.D. 8827) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary and final regulations (T.D. 8827), which are the subject of FR Doc. 99–17369, is corrected as follows:

§1.904–5 [Corrected]

1. On page 37677, column 3, amendatory instructions "**Par. 2.**", last line, the language "amended by removing the last sentence" is corrected to read "amended by removing the last two sentences".

2. On page 37678, column 1, amendatory instruction "**Par. 7.**", the language "**Par. 7.**" is corrected to read "**Par. 6.**".

3. On page 37678, column 1, amendatory instruction "**Par. 9.**", the language "**Par. 9.**" is corrected to read "**Par. 7.**".

§301.7701–3 [Corrected]

4. On page 37678, column 1, amendatory instruction "**Par. 10.**", the language "**Par. 10.**" is corrected to read "**Par. 8.**".

5. On page 37678, column 1, the amendatory instruction for "**Par. 11.**" is corrected to read as follows:

Par. 9. In §301.7701–3, the last two sentences in paragraph (f)(1) are removed.

6. On page 37678, column 1, amendatory instruction "**Par. 12.**", the language "**Par. 12.**" is corrected to read "**Par. 10.**".

Cynthia E. Grigsby,
Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on October 29, 1999, 8:45 a.m., and published in the issue of the Federal Register for November 1, 1999, 64 F.R. 58782)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative finding list of actions published in Internal Revenue Bulletins 1999–1 through 1999–26 is in Internal Revenue Bulletin 1999–27, dated July 6, 1999.


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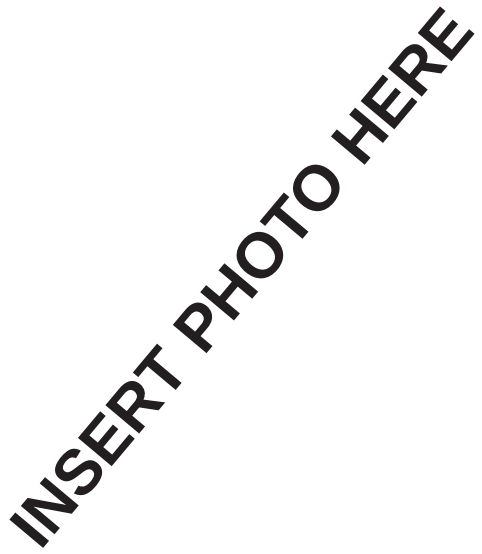
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