Internal Revenue
bulletin

Bulletin No. 2001–22
May 29, 2001

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2001–24, page 1290.
Forward triangular merger. A controlling corporation's transfer of the acquiring corporation's stock to another controlled subsidiary as part of the plan of reorganization, following the merger of the acquired corporation with and into the acquiring corporation, will not cause the transaction to fail to qualify as a reorganization under sections 368(a)(1)(A) and 368(a)(2)(D) of the Code.

Rev. Rul. 2001–25, page 1291.
Reverse triangular merger. A reverse triangular merger qualifies as a tax-free reorganization under sections 368(a)(1)(A) and 368(a)(2)(E) of the Code, notwithstanding that immediately after the merger, and as part of a plan that includes the merger, the surviving corporation sells a portion of its assets to an unrelated party for cash that it retains.

EXEMPT ORGANIZATIONS

Announcement 2001–61, page 1296.
Excess benefit transactions. This document contains notice of a public hearing and submission of outlines of oral comments on proposed regulations (REG–246256–96, 2001–8 I.R.B. 713) relating to excess benefit transactions. The hearing is scheduled for July 31, 2001. Comments must be received by July 10, 2001.

ADMINISTRATIVE

Rev. Proc. 2001–34, page 1293.
Qualified fuel under section 29(c)(1)(C). This procedure modifies Rev. Proc. 2001–30 (2001–19 I.R.B. 1163) regarding the circumstances under which the Service will issue private letter rulings regarding solid synthetic fuels produced from coal. Rev. Proc. 2001–30 modified.

Rev Proc. 2001–35, page 1293.
Qualified mortgage bonds; mortgage credit certificates; national median gross income. Guidance is provided concerning the use of the national and area median gross income figures by issuers of qualified mortgage bonds and mortgage credit certificates in determing the housing cost/income ratio described in section 143(f) of the Code. Rev. Proc. 2000–21 obsoleted except as provided in section 5.02 of this revenue procedure.

Announcement 2001–58, page 1295.
FOIA administrative appeals. Authority to respond to FOIA administrative appeals has been transferred to the Chief, Appeals, from the Assistant Chief Counsel (Disclosure & Privacy Law). All FOIA administrative appeals **must** be filed with the Chief, Appeals, at the address provided in this announcement.

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 1100.—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.

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

Section 25.—Interest on Certain Home Mortgages

26 CFR 1.25–4T: Qualified mortgage credit certificate program (temporary).

Guidance is provided for the use of the national and area median gross income figures by issuers of qualified mortgage bonds and mortgage credit certificates in determining the housing cost/income ratio described in section 143(f)(5) of the Code. See Rev. Proc. 2001–35, page 1293.

Section 29.—Credit for Producing Fuel From a Nonconventional Source

Under what circumstances may a taxpayer obtain a private letter ruling under section 29(c)(1)(C) that a solid fuel produced from coal is a qualified fuel? See Rev. Proc. 2001–34, page 1293.

Section 368.—Definitions Relating to Corporate Reorganizations

26 CFR 1.368–1: Purpose and scope of exception for reorganization exchanges.

Forward triangular merger. A controlling corporation's transfer of the acquiring corporation's stock to another controlled subsidiary as part of the plan of reorganization, following the merger of the acquired corporation with and into the acquiring corporation, will not cause the transaction to fail to qualify as a reorganization under sections 368(a)(1)(A) and 368(a)(2)(D) of the Code.

Rev. Rul. 2001–24

ISSUE

Whether a controlling corporation's transfer of the acquiring corporation's stock to another subsidiary controlled by the controlling corporation as part of the plan of reorganization, following the merger of the acquired corporation with and into the acquiring corporation, will cause the transaction to fail to qualify as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(D) of the Internal Revenue Code.

FACTS

Pursuant to a plan of reorganization, corporation X merges with and into corporation S, a newly organized wholly owned subsidiary of P, a corporation unrelated to X, in a transaction intended to qualify as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(D). S continues the historic business of X following the merger. Following the merger and as part of the plan of reorganization, P transfers the S stock to S1, a pre-existing, wholly owned subsidiary of P. Without regard to P's transfer of the S stock to S1, X's merger with and into S qualifies as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(D).

LAW AND ANALYSIS

Section 368(a)(1)(A) provides that the term reorganization includes a statutory merger or consolidation. Pursuant to § 368(a)(2)(D), the acquisition by one corporation, in exchange for stock of a corporation (the "controlling corporation") that is in control (as defined in § 368(c)) of the acquiring corporation, of substantially all of the properties of another corporation (the "merged corporation") shall not disqualify a transaction under § 368(a)(1)(A) if -

(i) no stock of the acquiring corporation is used in the transaction, and

(ii) in the case of a transaction under § 368(a)(1)(A), such transaction would have qualified under § 368(a)(1)(A) had the merger been into the controlling corporation.

Section 368(b) provides that a party to a reorganization qualifying under §§ 368(a)(1)(A) and 368(a)(2)(D) includes the merged corporation, the acquiring corporation, and the controlling corporation.

Section 368(a)(2)(C) provides that a transaction otherwise qualifying under § 368(a)(1)(A), (1)(B), or (1)(C) is not disqualified by reason of the fact that part or all of the assets or stock which were acquired in the transaction are transferred to a corporation controlled (as defined by § 368(c)) by the corporation acquiring such assets or stock.

Under § 1.368–2(f) of the Income Tax Regulations, if a transaction otherwise qualifies as a reorganization, a corporation remains a party to a reorganization even though the stock or assets acquired in the reorganization are transferred in a transaction described in § 1.368–2(k). Section 1.368–2(k)(1) restates the general rule contained in § 368(a)(2)(C) but permits the assets or stock acquired in the reorganization to be successively transferred to one or more corporations controlled (as defined under § 368(c)) in each transfer by the transferor corporation without disqualifying the reorganization. Additionally, § 1.368–2(k)(2) provides that a transaction qualifying under §§ 368(a)(1)(A) and 368(a)(2)(E) is not disqualified by reason of the fact that part or all of the stock of the surviving corporation is transferred or successively transferred to one or more corporations controlled in each transfer by the transferor corporation, or because part or all of the assets of the surviving corporation or the merged corporation are transferred or successively transferred to one or more corporations controlled in each transfer by the transferor corporation.

To qualify as a reorganization under § 368(a), a transaction must satisfy the continuity of business enterprise requirement. Section 1.368–1(d)(1) requires that the issuing corporation, in this case P, must either continue the target corporation's historic business or use a significant portion of the target's historic business assets in a business in order for a reorganization to satisfy the continuity of business enterprise requirement. The underlying policy of this rule is to ensure that reorganizations are limited to readjustments of continuing interests in property under modified corporate form. Pursuant to § 1.368–1(d)(4), the issuing corporation (the controlling corporation in the case of a § 368(a)(2)(D) reorganization) is treated as holding all of the businesses and assets of all of the members of its qualified group. Section 1.368–1(d)(4)(ii) defines a qualified group as one or more chains of corporations connected through stock ownership with the issuing corporation, but only if the issuing corporation owns directly stock meeting the requirements of § 368(c) in at least one other corporation, and stock meeting the requirements of § 368(c) in each of the corporations (ex-

cept the issuing corporation) is owned directly by one of the other corporations. Therefore, the issuing corporation is treated as directly holding the businesses and assets of second-tier and lower-tier subsidiaries that are part of the qualified group.

In applying these requirements to the facts, the continuity of business enterprise requirement is satisfied. Because S and S1 are members of P's qualified group, P will be treated as directly holding the businesses and assets of S. Therefore, because S will continue X's historic business following the merger, the transaction will satisfy the continuity of business enterprise requirement of § 1.368–1(d).

The remaining issue is whether P's transfer of the S stock to S1 as part of the plan of reorganization causes P to fail to control S for purposes of § 368(a)(2)(D) and causes P to fail to be a party to the reorganization. Section 368(a)(2)(C) and § 1.368–2(k) do not specifically address P's transfer of the stock of S to S1 following an otherwise qualifying reorganization under §§ 368(a)(1)(A) and 368(a)(2)(D), because assets and not stock were acquired in the reorganization. If the transaction were recast under the step transaction doctrine so that X's assets were viewed as being acquired by a second-tier subsidiary of P, the transaction would not qualify as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(D) because P would not control S. For the reasons set forth below, the transaction will not be recast under the step transaction doctrine.

The legislative history of § 368(a)(2)(E) suggests that forward and reverse triangular mergers should be treated similarly. *See* S. Rep. No. 1533, 91st Cong., 2d Sess. 2 (1970). As discussed above, pursuant to § 1.368–2(k)(2), a controlling corporation in a merger that qualifies under §§ 368(a)(1)(A) and 368(a)(2)(E) may transfer the stock (or assets) of the surviving corporation to a controlled subsidiary without causing the transaction to fail to qualify as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(E). The concept that forward and reverse triangular mergers should be treated similarly supports permitting P to transfer the S stock to S1 without causing the transaction to fail to qualify as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(D). This concept also is reflected in the continuity of business enterprise regulations under § 1.368–1(d), which do not distinguish between § 368(a)(2)(D) and § 368(a)(2)(E) reorganizations and do not differentiate between whether stock or assets are acquired.

Section 368(a)(2)(C) does not preclude this transaction from qualifying as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(D) because of the stock transfer. By its terms, § 368(a)(2)(C) is a permissive rather than an exclusive or restrictive section. *See, e.g.*, § 1.368–2(k); Rev. Rul. 64–73, 1964–1 C.B. 142. Further, § 368(a)(2)(C) and § 1.368–2(k) similarly do not cause P to fail to be treated as a party to the reorganization. *See* Rev. Rul. 64–73.

Accordingly, for the reasons set forth above, P's transfer of the S stock to S1 as part of the plan of reorganization, following the merger of X with and into S, will not cause P to be treated as not in control of S for purposes of § 368(a)(2)(D). Additionally, P will be treated as a party to the reorganization.

HOLDING

A controlling corporation's transfer of the acquiring corporation's stock to a subsidiary controlled by the controlling corporation as part of the plan of reorganization, following the merger of the acquired corporation with and into the acquiring corporation, will not cause the transaction to fail to qualify as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(D).

DRAFTING INFORMATION

The principal authors of this revenue ruling are Joseph Calianno and Marnie Rapaport of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue ruling, contact Mr. Calianno at (202) 622-7930 or Ms. Rapaport at (202) 622-7550 (not a toll-free call).

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26 CFR 1.368–1: Purpose and scope of exception of reorganization exchanges.

Reverse triangular merger. A reverse triangular merger qualifies as a tax-free reorganization under sections 368(a)(1)(A) and 368(a)(2)(E) of the Code, notwithstanding that immediately after the merger, and as part of a plan that includes the merger, the surviving corporation sells a portion of its assets to an unrelated party for cash that it retains.

Rev. Rul. 2001–25

ISSUE

On the facts below, does a merger fail to qualify as a tax-free reorganization under §§ 368(a)(1)(A) and 368(a)(2)(E) of the Internal Revenue Code if, immediately after the merger and as part of a plan that includes the merger, the surviving corporation sells a portion of its assets to an unrelated party?

FACTS

P is a manufacturing corporation organized under the laws of state A. T is also a manufacturing corporation organized under the laws of state A. P organizes corporation S as a wholly owned state A subsidiary of P, and S merges with and into T in a statutory merger under the laws of state A. In the merger, the shareholders of T holding 90 percent of the T stock exchange their T stock for voting stock of P. The remaining shareholders of T receive $y cash for their T stock. Immediately after the merger and as part of a plan that includes the merger, T sells 50 percent of its operating assets for $z cash to X, an unrelated corporation. After the sale of the assets to X, T retains the sales proceeds. Without regard to the requirement that T hold substantially all of the assets of T and S, the merger satisfies all the other requirements applicable to reorganizations under §§ 368(a)(1)(A) and 368(a)(2)(E).

LAW AND ANALYSIS

Section 368(a)(1)(A) states that the term "reorganization" means a statutory merger or consolidation. Section 368(a)(2)(E) provides that a transaction otherwise qualifying under § 368(a)(1)(A) will not be disqualified by reason of the fact that stock of a corporation (the "controlling corporation") that before the merger was in control of the acquiring corporation is used in the transaction, if (1) after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties

of the merged corporation (other than stock of the controlling corporation distributed in the transaction), and (2) in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation that constitutes control of such corporation.

Section 1.368–2(j)(3)(iii) of the Income Tax Regulations provides that, for purposes of § 368(a)(2)(E), "[t]he term 'substantially all' has the same meaning as in section 368(a)(1)(C)."

Rev. Rul. 88–48, 1988–1 C.B. 117, holds that the requirement of § 368(a)(1)(C) that the acquiring corporation acquire "substantially all" of the properties of a target corporation is satisfied when immediately prior to the target corporation's transfer of assets to the acquiring corporation, the target corporation sells 50 percent of its historic assets to unrelated parties for cash and immediately transfers that cash, along with its other properties, to the acquiring corporation.

Section 368(a)(2)(E) uses the term "holds" rather than the term "acquisition" as do §§ 368(a)(1)(C) and 368(a)(2)(D) because it would be inapposite to require the surviving corporation to "acquire" its own properties. The "holds" requirement of § 368(a)(2)(E) does not impose requirements on the surviving corporation before and after the merger that would not have applied had such corporation transferred its properties to another corporation in a reorganization under § 368(a)(1)(C) or a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(D).

In this case, T's post-merger sale of 50 percent of its operating assets for cash to X prevents T from holding substantially all of its historic business assets immediately after the merger. As in Rev. Rul. 88–48, however, the sales proceeds continue to be held by T. Therefore, the post-acquisition sale of 50 percent of T's operating assets where T holds the proceeds of such sale along with its other operating assets does not cause the merger to violate the requirement of § 368(a)(2)(E) that the surviving corporation hold substantially all of its properties after the transaction.

Accordingly, the merger qualifies as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(E), notwithstanding the sale by T of a portion of its assets to X immediately after the merger and as part of a plan that includes the merger.

HOLDING

On the facts above, a merger qualifies as a tax-free reorganization under §§ 368(a)(1)(A) and 368(a)(2)(E), notwithstanding the fact that the surviving corporation sells a portion of its assets to an unrelated party immediately after the merger and as part of a plan that includes the merger.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Marnie Rapaport and Joseph M. Calianno of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue ruling, contact Ms. Rapaport at (202) 622-7550 (not a toll-free call) or Mr. Calianno at (202) 622-7930 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellanous

26 CFR 601.201: Rulings and determination letters. (Also Part I, §29.)

Rev. Proc. 2001–34

SECTION 1. PURPOSE

.01 This revenue procedure modifies Rev. Proc. 2001–30, 2001–19 I.R.B. 1163, which provides the circumstances under which the Internal Revenue Service will issue private letter rulings regarding whether a solid fuel produced from coal is a qualified fuel under § 29(c)(1)(C) of the Internal Revenue Code. The circumstances necessary for the Service to issue a private letter ruling include the presence of coal feedstock particles no larger than a specific size, and the performance of specific activities in processing the feedstock in order to effectuate a significant chemical change.

.02 Rev. Proc. 2001–30 is modified to expand the range of sizes of coal feedstock and to eliminate one particular activity as a necessary part of a process that results in a qualified fuel.

SECTION 2. MODIFICATIONS

.01 Section 3 of Rev. Proc. 2001–30 is modified by deleting the word "entirely" after the phrase "The feedstock coal consists", adding the phrase "the majority of which, by weight, are" after the word "particles", and substituting "3/8" for "1/8" in the first condition.

.02 Section 3 of Rev. Proc. 2001–30 is also modified by deleting the phrase "following an acid bath" after the word "monomers" in the second condition.

.03 Section 3 of Rev. Proc. 2001–30, as modified, is set forth below as Section 3 of this revenue procedure.

SECTION 3. PROCEDURE

The Service will issue rulings that a solid fuel (other than coke) produced from coal is a qualified fuel under § 29(c)(1)(C) if the conditions set forth below are satisfied and evidence is presented that all, or substantially all, of the coal used as feedstock undergoes a significant chemical change. The conditions are that:

1. The feedstock coal consists of coal fines or crushed coal comprised of particles the majority of which, by weight, are no larger than 3/8 inch;

2. The feedstock coal is thoroughly mixed in a mixer: (a) with styrene or other monomers, (b) with quinoline (C_9H_7N) or other organic resin and left to cure for several days, (c) with ultra heavy hydrocarbons, or (d) with an aluminum and/or magnesium silicate binder following heating to a minimum temperature of 500 degrees Fahrenheit; and

3. The treated feedstock is subjected to elevated temperature and pressure that results in briquettes, pellets, or an extruded fuel product, or the taxpayer represents that the omission of this procedure will not significantly increase the production of the facility over the remainder of the period during which the § 29 credit is allowable.

SECTION 4. EFFECTIVE DATE

This revenue procedure applies to all ruling requests, including any pending in the national office and any submitted after the date of publication of this revenue procedure.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2001–30 is modified.

DRAFTING INFORMATION

The principal author of this revenue procedure is David McDonnell of the Office of Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the IRS and Treasury participated in its development. For further information regarding this revenue procedure, contact Mr. McDonnell at (202) 622-3120 (not a toll-free call).

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26 CFR 601.201: Rulings and determination letters.
(Also Part I, Sections 25, 103, 143; 1.25–4T, 1.103–1, 6a.103A–2.)

Rev. Proc. 2001–35

SECTION 1. PURPOSE

This revenue procedure provides guidance concerning the United States and area median gross income figures that are to be used by issuers of qualified mortgage bonds, as defined in § 143(a) of the Internal Revenue Code, and issuers of mortgage credit certificates, as defined in § 25(c), in computing the housing cost/income ratio described in § 143(f)(5).

SECTION 2. BACKGROUND

.01 Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any state or local bond. Section 103(b)(1) provides that § 103(a) shall not apply to any private activity bond that is not a "qualified bond" within the meaning of § 141. Section 141(e) provides that the term "qualified bond" includes any private activity bond that (1) is a qualified mortgage bond, (2) meets the volume cap requirements under § 146, and (3) meets the applicable requirements under § 147.

.02 Section 143(a)(1) provides that the term "qualified mortgage bond" means a bond that is issued as part of a "qualified mortgage issue". Section 143(a)(2)(A) provides that the term "qualified mortgage issue" means an issue of one or more bonds by a state or political subdivision thereof, but only if (i) all proceeds of the issue (exclusive of issuance costs and a reasonably required reserve) are to be used to finance owner-occupied residences; (ii) the issue meets the requirements of subsections (c), (d), (e), (f), (g), (h), (i), and (m)(7) of § 143; (iii) the issue does not meet the private business tests of paragraphs (1) and (2) of § 141(b); and (iv) with respect to amounts received more than 10 years after the date of issuance, repayments of $250,000 or more of principal on financing provided by the issue are used not later than the close of the first semi-annual period beginning after the date the prepayment (or complete repayment) is received to redeem bonds that are part of the issue.

.03 Section 143(f) imposes eligibility requirements concerning the maximum income of mortgagors for whom financing may be provided by qualified mortgage bonds. Section 25(c)(2)(A)(iii)(IV) provides that recipients of mortgage credit certificates must meet the income requirements of § 143(f). Generally, under §§ 143(f)(1) and 25(c)(2)(A)(iii)(IV),

these income requirements are met only if all owner-financing under a qualified mortgage bond and all certified indebtedness amounts under a mortgage credit certificate program are provided to mortgagors whose family income is 115 percent or less of the applicable median family income. Under § 143(f)(6), the income limitation is reduced to 100 percent of the applicable median family income if there are fewer than three individuals in the family of the mortgagor.

.04 Section 143(f)(4) provides that the term "applicable median family income" means the greater of (A) the area median gross income for the area in which the residence is located or (B) the statewide median gross income for the state in which the residence is located.

.05 Section 143(f)(5) provides for an upward adjustment of the income limitations in certain high housing cost areas. Under § 143(f)(5)(C), a high housing cost area is a statistical area for which the housing cost/income ratio is greater than 1.2. The housing cost/income ratio is determined under § 143(f)(5)(D) by dividing (a) the applicable housing price ratio by (b) the ratio that the area median gross income bears to the median gross income for the United States. The applicable housing price ratio is the new housing price ratio (new housing average purchase price for the area divided by the new housing average purchase price for the United States) or the existing housing price ratio (existing housing average area purchase price divided by the existing housing average purchase price for the United States), whichever results in the housing cost/income ratio being closer to 1. This income adjustment applies only to bonds issued and nonissued bond amounts elected after December 31, 1988.

.06 The Department of Housing and Urban Development (HUD) has computed the median gross income for the United States, the states, and statistical areas within the states. The income information was released to the HUD regional offices on April 6, 2001, and may be obtained by calling the HUD reference service at 1-800-245-2691. The income information is also available at HUD's World Wide Web site, *http:\\huduser.org \datasets\il.html,* which provides a menu from which you may select the year and type of data of interest. The Internal Revenue Service annually publishes only the median gross income for the United States.

.07 The most recent nationwide average purchase prices and average area purchase price safe harbor limitations were published on September 6, 1994, in Rev. Proc. 94–55, 1994–2 C.B. 716.

SECTION 3. APPLICATION

.01 When computing the housing cost/income ratio under § 143(f)(5), issuers of qualified mortgage bonds and mortgage credit certificates must use $52,500 as the median gross income for the United States. See section 2.06 of this revenue procedure.

.02 When computing the housing cost/income ratio under § 143(f)(5), issuers of qualified mortgage bonds and mortgage credit certificates must use the area median gross income figures released by HUD on April 6, 2001. See section 2.06 of this revenue procedure.

SECTION 4. EFFECT ON OTHER REVENUE PROCEDURES

.01 Rev. Proc. 2000–21, 2000–1 C.B. 971, is obsolete except as provided in section 5.02 of this revenue procedure.

.02 This revenue procedure does not affect the effective date provisions of Rev. Rul. 86–124, 1986–2 C.B. 27. Those effective date provisions will remain operative at least until the Service publishes a new revenue ruling that conforms the approach to effective dates set forth in Rev. Rul. 86–124 to the general approach taken in this revenue procedure.

SECTION 5. EFFECTIVE DATES

.01 Issuers must use the United States and area median gross income figures specified in section 3 of this revenue procedure for commitments to provide financing that are made, or (if the purchase precedes the financing commitment) for residences that are purchased, in the period that begins on April 6, 2001, and ends on the date when these United States and area median gross income figures are rendered obsolete by a new revenue procedure.

.02 Notwithstanding section 5.01 of this revenue procedure, issuers may continue to rely on the United States and area median gross income figures specified in Rev. Proc. 2000–21 with respect to bonds originally sold and nonissued bond amounts elected not later than June 28, 2001, if the commitments or purchases described in section 5.01 are made not later than August 27, 2001.

DRAFTING INFORMATION

The principal author of this revenue procedure is Allan B. Seller of the Office of Assistant Chief Counsel (Exempt Organizations/Employment Tax/Government Entities). For further information regarding this revenue procedure contact Mr. Seller at (202) 622-3980 (not a toll-free call).

Part IV. Items of General Interest

FOIA Administrative Appeals Transferred to Appeals

Announcement 2001–58

SUMMARY: Responsibility for an administrative appeal under the Freedom of Information Act from a denial of a request for information, for a fee waiver, for determination of a favorable fee category, or for expedited processing by a disclosure officer of the Internal Revenue Service (*i.e.*, a FOIA administrative appeal) has been transferred to the Chief, Appeals (Appeals). Previously, the Assistant Chief Counsel (Disclosure & Privacy Law) was responsible for the FOIA administrative appeal function. The Service transferred responsibility as a result of the reorganization and restructuring of the Internal Revenue Service. Under this new transfer of authority, the requester and Appeals will now attempt to resolve any disputed request under its jurisdiction for information, fee waiver, fee category, or expedited processing pursuant to the Freedom of Information Act. This procedure is effective for requests received on or after January 15, 2001. Because Appeals will expand its jurisdiction by this transfer of authority, we welcome comments on the process. Comments should be submitted to:

Internal Revenue Service
Bailey's Crossroads Appeals Office,
Attn: FOIA Coordinator
One Skyline Place – Suite 803
5205 Leesburg Pike
Bailey's Crossroads, VA 22041

BACKGROUND: Previously, FOIA administrative appeals were considered by the Office of Assistant Chief Counsel (Disclosure & Privacy Law). A recommendation of the Treasury Inspector General for Tax Administration emphasized that the Service should find ways to timely respond to FOIA administrative appeals. IRS management agreed with the recommendation; the IRS' Modernization Plan calls for the transfer of FOIA administrative appeal responsibility from the Office of Chief Counsel to Appeals.

OVERVIEW: Appeals has been delegated the authority to respond to FOIA administrative appeals by the Commissioner. *See* Delegation Order 165 (Rev. 8) dated October 2, 2000. The mission of Appeals is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the requester. A FOIA administrative appeal is an optional process, initiated by the requester, where Appeals will provide a requester with a fair and impartial independent determination based upon the facts and the law.

ORGANIZATIONAL PLACEMENT OF FOIA ADMINISTRATIVE APPEALS: The authority to determine FOIA administrative appeals are placed in Appeals under the Director, Office of Small Business/Self-Employment and Tax Exempt/Governmental Entities. The Chief, Appeals will provide line authority over Appeals' operations and, thus, promote uniformity and consistency in determinations made under this new appeal authority.

Procedure for Requesting a FOIA Administrative Appeal

SUMMARY: A FOIA administrative appeal is an independent "fresh look" of an initial denial of a person's request for access to records, fee waiver, fee category, or expedited processing under the Freedom of Information Act. The initial FOIA request may be filed with the Internal Revenue Service at the national headquarters, an area office, or a service or compliance campus. However, a FOIA administrative appeal *must* be filed with the Chief, Appeals at the following address:

Internal Revenue Service
Richmond Appeals Office –
FOIA Appeal
2727 Enterprise Parkway Suite100
Richmond, VA 23229

SCOPE AND MANNER OF THE FOIA ADMINISTRATIVE APPEAL: Generally, effective January 15, 2001, Appeals has jurisdiction over all FOIA administrative appeals. Some FOIA administrative appeals received by the Internal Revenue Service prior to the effective date will remain with the Assistant Chief Counsel (Disclosure & Privacy Law) until completed. Appeals will respond to certain FOIA administrative appeals received prior to the effective date; those requesters will be notified by Appeals that jurisdiction for a response has been transferred.

A FOIA administrative appeal is made by filing a letter of appeal to the initial adverse determination letter sent to the requester by a disclosure officer of the Internal Revenue Service. The format for an appeal is prescribed in the Statement of Procedural Rules, 26 CFR § 601.702 (c)(8). A FOIA administrative appeal shall at a minimum specify the date of the request, the office to which the request was submitted, the date of the adverse determination letter, and, where possible, enclose a copy of the initial request and the adverse determination letter being appealed.

Disputes of factual matters should include a statement in writing of the requester's view of the facts. Factual matters concern, for example, facts establishing:

- existence of a record;
- fee category of the requester;
- support for a fee waiver determination; or
- support for a statutory expedited processing.

If there is a disagreement as to the matter of law or other authority, the requester should state the reason or reasons in writing for the requester's position. The reasoning may be based on what the requester believes is logical and fair. Consideration of the appeal is enhanced and facilitated by including references to supporting authorities, such as the applicable sections of the Freedom of Information Act, Treasury regulations, court cases and policies of the IRS.

The Freedom of Information Act created a right of access to records, not a right to personal services. Appeals will not respond to questions that ask the Service to justify tax policy or law, or similar discussions, nor will Appeals answer questions about a person's tax liability in the form of a FOIA administrative appeal. Many Internal Revenue Service publications are available to the public that answer tax

questions and explain Service policies. These documents will help persons making FOIA administrative appeals understand matters concerning their personal obligation and liability to pay federal taxes. In addition, the Service has many Taxpayer Service personnel that will help persons making FOIA administrative appeals understand the specific documents available and how to locate these documents. Finally, the Internal Revenue Manual is available for public inspection in the Internal Revenue Services Freedom of Information Reading Room.

ISSUES NOT WITHIN APPEALS' JURISDICTION: Under the Department of Treasury regulations, the following circumstances do not give rise to a FOIA administrative appeal and are not within the jurisdiction of Appeals:

- the lack of a timely response from an initial request;
- a reply to the FOIA request which states that the Freedom of Information Act does not require the IRS to provide explanations or answers in response to questions concerning tax policies or tax law; or
- a request for matters that the Internal Revenue Service has published in the Federal Register or is required to be made available for public inspection in its Freedom of Information Reading Room, 1111 Constitution Avenue, N.W., Washington, D.C. The public should be aware that much of this material is available for public inspection on the Service's Electronic Freedom of Information Reading Room *(www.irs.gov/efoia).*

If the Internal Revenue Service has not timely responded to the requester, the law permits the requester to file a lawsuit in the United States District Court in the judicial district in which the requester lives or works, or where the records subject to the request are located, or in the District of Columbia.

EFFECTIVE DATE: The effective date for Appeals jurisdiction is January 15, 2001.

FOR FURTHER INFORMATION CONTACT: Theodore J. Cichaski, Appeals Freedom of Information Act Coordinator at 703-756-6697 Ext. 18 (not a toll-free number).

Failure by Certain Charitable Organizations to Meet Certain Qualification Requirements; Taxes on Excess Benefit Transactions; Hearing

Announcement 2001–61

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations (REG–246256–96, 2001–8 I.R.B. 713) relating to charitable organizations to meet certain qualification requirements and taxes on excess benefit transactions.

DATES: The public hearing is being held on July 31, 2001, at 10 a.m. The IRS must receive outlines of topics to be discussed at the hearing by July 10, 2001.

ADDRESSES: The public hearing is being held in the auditorium, room 7218, 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 identification to enter the building.

Mail outlines to: Regulations Unit CC (REG–246256–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to: Regulations Unit CC (REG–246256–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Submit electronic outlines of oral comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor of the Regulations Unit (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed regulations (REG–246256–96) that was published in the **Federal Register** on Wednesday, January 10, 2001 (66 FR 2173).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by July 10, 2001.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors 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 document.

Cynthia E. Grigsby,
Chief, Regulations Unit,
Office of Special Counsel
(Modernization & Strategic Planning).

(Filed by the Office of the Federal Register on May 14, 2001, 8:45 a.m., and published in the issue of the Federal Register for May 15, 2001, 66 F.R. 26824)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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