Internal Revenue
bulletin

Bulletin No. 2001–42
October 15, 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. 2001–45, page 323.
LIFO; price indexes; department stores. The August 2001 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, August 31, 2001.

Rev. Rul. 2001–46, page 321.
Step transaction. Under the facts presented, if, pursuant to an integrated plan, a newly formed wholly owned subsidiary of an acquiring corporation merges into a target corporation, followed by the merger of the target corporation into the acquiring corporation, the transaction is treated as a single statutory merger of the target corporation into the acquiring corporation that qualifies as a reorganization under section 368(a)(1)(A) of the Code. Rev. Rul. 67-274 amplified. Rev. Rul. 90–95 distinguished.

Rev. Rul. 2001–48, page 324.
This ruling updates the list of countries that grant a reciprocal exemption for income from the international operation of ships or aircraft to U.S. persons for purposes of sections 872(b) and 883 of the Code. Rev. Ruls. 89–42 and 97–31 modified and superseded.

T.D. 8964, page 320.
Final regulations under section 301 of the Code relate to liabilities assumed in connection with corporate distributions.

Announcement 2001–99, page 340.
For purposes of the Archer MSA pilot program under section 220(j)(2) of the Code, 2001 is not a cut-off year.

EXEMPT ORGANIZATIONS

Announcement 2001–102, page 340.
A list is provided of organizations now classified as private foundations.

ADMINISTRATIVE

Rev. Proc. 2001–47, page 332.
***Per diem* allowances.** This procedure provides rules for deeming substantiated the amount of certain reimbursed traveling expenses of an employee as well as optional rules for determining the amount of deductible meals and incidental expenses while traveling away from home. Rev. Proc. 2000–39 superseded.

Actions Relating to Court Decisions is 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 Other Related Items, and Subpart B, Legislation and Related Committee Reports.

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

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

The 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 Decisions of the Tax Court

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 Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also 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:

Therese Hahn v. Commissioner,[1]
110 T.C. 140 (1998)
T.C. Dkt. No. 17210–96

[1] Acquiescence relating to whether I.R.C. section 2040(b)(1) applies to joint interest created before January 1, 1977, where the deceased joint tenant died after December 31, 1981.

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

Section 62.—Adjusted Gross Income Defined

26 CFR 1.62–2: Reimbursements and other expense allowance arrangements.

Rules are set forth under which reimbursement or other expense allowance arrangement for the cost of lodging, meal, and incidental expenses or meal and incidental expenses incurred by an employee while traveling away from home will satisfy the requirement of § 62(c) of the Code as to substantiation of the amount of the expense. See Rev. Proc. 2001–47, page 332.

Section 162.—Trade or Business Expenses

26 CFR 1.162–17: Reporting and substantiation of certain business expenses of employees.

Rules are set forth for substantiating the amount of a deduction or an expense for lodging, meal, and incidental expenses or meal and incidental expenses incurred while traveling away from home. See Rev. Proc. 2001–47, page 332.

Section 267.—Losses, Expenses, and Interest With Respect to Transactions Between Related Taxpayers

26 CFR 1.267(a)–1: Deductions disallowed.

When a payor provides a *per diem* allowance to an employee who is a related party, the rules set forth for the deemed substantiation to the payor of the amount of the employee's ordinary and necessary business expenses for lodging, meal, and incidental expenses incurred while traveling away from home do not apply. See Rev. Proc. 2001–47, page 332.

Section 274.—Disallowance of Certain Entertainment, etc., Expenses

26 CFR 1.274–5: Substantiation requirements.

Rules are set forth for an optional method for substantiating the amount of ordinary and necessary business expenses of an employee for lodging, meal, and incidental expenses or meal and incidental expenses incurred while traveling away from home when a payor provides a *per diem* allowance under a reimbursement or other expense allowance arrangement to pay for such expenses. Rules are also set forth for an optional method for employees and self-employed individuals to use in computing the deductible costs of business meal and incidental expenses paid or incurred while traveling away from home. See Rev. Proc. 2001–47, page 332.

Section 301.—Distributions of Property

26 CFR 1.301-1: Rules applicable with respect to distributions of money and other property.

T.D. 8964

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Liabilities Assumed in Certain Corporate Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the assumption of liabilities in certain corporate transactions under section 301 of the Internal Revenue Code. These final regulations affect corporations and their shareholders. Changes to the applicable law were made by the Miscellaneous Trade and Technical Corrections Act of 1999.

DATES: *Effective Date*: These regulations are effective September 27, 2001.

Applicability Date: For dates of applicability, see the Effective Date portion of the preamble under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Douglas Bates (202) 622-7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Changes to the applicable law were made by the Miscellaneous Trade and Technical Corrections Act of 1999, Public Law 106-36 (113 Stat. 127). On January 4, 2001, temporary regulations (T.D. 8924, 2001–6 I.R.B. 489) were published in the **Federal Register** (66 FR 723) under section 301 of the Internal Revenue Code, relating to liabilities assumed in connection with a distribution of property made by a corporation with respect to its stock. A notice of proposed rulemaking cross-referencing the temporary regulations (REG–106791–00, 2001–6 I.R.B. 521) was published in the **Federal Register** for the same day (66 FR 748). No public hearing was requested or held.

No written comments responding to the notice were received. This document adopts, without substantive change, final regulations with respect to the notice of proposed rulemaking.

Effective Date

The regulations apply generally to distributions occurring after January 4, 2001. The regulations also apply to distributions occurring on or prior to January 4, 2001, if the distribution is made as part of a transaction described in, or substantially similar to, the transaction in Notice 99–59 (1999–2 C.B. 761), including transactions designed to reduce gain. Under section 7805(b)(3), the Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse. These regulations are being applied retroactively to prevent the abuse described in Notice 99–59. No inference should be drawn regarding the tax treatment of distributions not covered by these regulations.

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 final regulations do not have a significant economic impact on a substantial number of small entities. These final regulations under section 301 address distributions by corporations in which liabilities are assumed by the shareholders or in which the distributed property is subject to liabilities. These final regulations provide that the amount of a distribution under section 301 will be reduced by the amount of any liability that is treated as assumed by the distributee within the meaning of section 357(d).

These regulations apply to persons receiving distributions of property in

which the property is subject to a liability, or in which liabilities are assumed by the distributee. These regulations, however, will affect only those persons described in the preceding sentence that would have, but for the regulations, considered liabilities to have been assumed in circumstances other that those described in section 357(d). Therefore, most businesses will not be affected by the final regulations in any given year. 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 Code, the notice of proposed rulemaking accompanying these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Michael N. Kaibni of the Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

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 * * *

Section 1.301–1 also issued under 26 U.S.C. 357(d)(3). * * *

Par. 2. Section 1.301–1 is amended by revising paragraph (g) to read as follows:

§1.301–1 Rules applicable with respect to distributions of money and other property.

* * * * *

(g) *Reduction for liabilities* - - (1) *General rule*. For the purpose of section 301, no reduction shall be made for the amount of any liability, unless the liability is assumed by the shareholder within the meaning of section 357(d).

(2) *No reduction below zero*. Any reduction pursuant to paragraph (g)(1) of this section shall not cause the amount of the distribution to be reduced below zero.

(3) *Effective dates* — (i) *In general*. This paragraph (g) applies to distributions occurring after January 4, 2001.

(ii) *Retroactive application*. This paragraph (g) also applies to distributions made on or before January 4, 2001, if the distribution is made as part of a transaction described in, or substantially similar to, the transaction in Notice 99–59 (1999–2 C.B. 761), including transactions designed to reduce gain (see § 601.601(d)(2) of this chapter). For rules for distributions on or before January 4, 2001 (other than distributions on or before that date to which this paragraph (g) applies), see rules in effect on January 4, 2001 (see §1.301–1(g) as contained in 26 CFR Part 1 revised April 1, 2001).

* * * * *

§ 1.301–1T [Removed]

Par. 3. Section 1.301–1T is removed.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved September 17, 2001.

Mark Weinberger,
Assistant Secretary of the Treasury for Tax Policy.

(Filed by the Office of the Federal Register on September 26, 2001, 8:45 a.m., and published in the issue of the Federal Register for September 27, 2001, 66 F.R. 49278)

Section 368(a)(1)(A).—Definitions Relating to Corporate Reorganizations

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

Step transaction. Under the facts presented, if, pursuant to an integrated plan, a newly formed wholly owned subsidiary of an acquiring corporation merges into a target corporation, followed by the merger of the target corporation into the acquiring corporation, the transaction is treated as a single statutory merger of the target corporation into the acquiring corporation that qualifies as a reorganization under section 368(a)(1)(A).

Rev. Rul. 2001–46

ISSUE

Under the facts described below, what is the proper tax treatment if, pursuant to an integrated plan, a newly formed wholly owned subsidiary of an acquiring corporation merges into a target corporation, followed by the merger of the target corporation into the acquiring corporation?

FACTS

Situation (1). Corporation X owns all the stock of Corporation Y, a newly formed wholly owned subsidiary. Pursuant to an integrated plan, X acquires all of the stock of Corporation T, an unrelated corporation, in a statutory merger of Y into T (the "Acquisition Merger"), with T surviving. In the Acquisition Merger, the T shareholders exchange their T stock for consideration, 70 percent of which is X voting stock and 30 percent of which is cash. Following the Acquisition Merger and as part of the plan, T merges into X in a statutory merger (the "Upstream Merger"). Assume that, absent some prohibition against the application of the step transaction doctrine, the step transaction doctrine would apply to treat the Acquisition Merger and the Upstream Merger as a single integrated acquisition by X of all the assets of T. Also assume that the single integrated transaction would satisfy the nonstatutory requirements of a reorganization under § 368(a) of the Internal Revenue Code.

Situation (2). The facts are the same as in Situation (1) except that in the Acquisition Merger the T shareholders receive solely X voting stock in exchange for their T stock, so that the Acquisition Merger, if viewed independently of the Upstream Merger, would qualify as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(E).

LAW

Section 338(a) provides that if a corporation makes a qualified stock purchase and makes an election under that section, then the target corporation (i) shall be treated as having sold all of its assets at the close of the acquisition date at fair market value and (ii) shall be treated as a new corporation which purchased all of

its assets as of the beginning of the day after the acquisition date. Section 338(d)(3) defines a qualified stock purchase as any transaction or series of transactions in which stock (meeting the requirements of § 1504(a)(2)) of one corporation is acquired by another corporation by purchase during a 12-month acquisition period. Section 338(h)(3) defines a purchase generally as any acquisition of stock, but excludes acquisitions of stock in exchanges to which § 351, § 354, § 355, or § 356 applies.

Rev. Rul. 90–95 (1990–2 C.B. 67) (Situation 2), holds that the merger of a newly formed wholly owned domestic subsidiary into a target corporation with the target corporation shareholders receiving solely cash in exchange for their stock, immediately followed by the merger of the target corporation into the domestic parent of the merged subsidiary, will be treated as a qualified stock purchase of the target corporation followed by a § 332 liquidation of the target corporation. As a result, the parent's basis in the target corporation's assets will be the same as the basis of the assets in the target corporation's hands. The ruling explains that even though "the step-transaction doctrine is properly applied to disregard the existence of the [merged subsidiary]," so that the first step is treated as a stock purchase, the acquisition of the target corporation's stock is accorded independent significance from the subsequent liquidation of the target corporation and, therefore, is treated as a qualified stock purchase regardless of whether a § 338 election is made.

Section 1.338–3(d) of the Income Tax Regulations incorporates the approach of Rev. Rul. 90–95 into the regulations by requiring the purchasing corporation (or a member of its affiliated group) to treat certain asset transfers following a qualified stock purchase (where no § 338 election is made) independently of the qualified stock purchase. In the example in § 1.338–3(d)(5), the purchase for cash of 85 percent of the stock of a target corporation, followed by the merger of the target corporation into a wholly owned subsidiary of the purchasing corporation, is treated (other than by certain minority shareholders) as a qualified stock purchase of the stock of the target corporation followed by a § 368 reorganization of the target corporation into the subsidiary. As a result, the subsidiary's basis in the target corporation's assets is the same as the basis of the assets in the target corporation's hands.

Section 368(a)(1)(A) defines the term "reorganization" as a statutory merger or consolidation. Section 368(a)(2)(E) provides that a transaction otherwise qualifying under § 368(a)(1)(A) shall not be disqualified by reason of the fact that stock of a corporation (controlling corporation), which before the merger was in control of the merged corporation, is used in the transaction if (i) after the transaction, the corporation surviving the merger holds substantially all of its properties and the properties of the merged corporation, and (ii) in the transaction, former shareholders of the surviving corporation exchange, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

In Rev. Rul. 67–274 (1967–2 C.B. 141), Corporation Y acquires all of the stock of Corporation X in exchange for some of the voting stock of Y and, thereafter, X completely liquidates into Y. The ruling holds that because the two steps are parts of a plan of reorganization, they cannot be considered independently of each other. Thus, the steps do not qualify as a reorganization under § 368(a)(1)(B) followed by a liquidation under § 332, but instead qualify as an acquisition of X's assets in a reorganization under § 368(a)(1)(C).

ANALYSIS

Situation (1)

Because of the amount of cash consideration paid to the T shareholders, the Acquisition Merger could not qualify as a reorganization under § 368(a)(1)(A) and § 368(a)(2)(E). If the Acquisition Merger and the Upstream Merger in Situation (1) were treated as separate from each other, as were the steps in Situation (2) of Rev. Rul. 90–95, the Acquisition Merger would be treated as a stock acquisition that is a qualified stock purchase, because the stock is not acquired in a § 354 or § 356 exchange. The Upstream Merger would qualify as a liquidation under § 332.

However, if the approach reflected in Rev. Rul. 67–274 were applied to Situation (1), the transaction would be treated as an integrated acquisition of T's assets by X in a single statutory merger (without a preliminary stock acquisition). Accordingly, unless the policies underlying § 338 dictate otherwise, the integrated asset acquisition in Situation (1) is properly treated as a statutory merger of T into X that qualifies as a reorganization under § 368(a)(1)(A). *See King Enterprises, Inc. v. United States*, 418 F.2d 511 (Ct. Cl. 1969) (in a case that predated § 338, the court applied the step transaction doctrine to treat the acquisition of the stock of a target corporation followed by the merger of the target corporation into the acquiring corporation as a reorganization under § 368(a)(1)(A)); *J.E. Seagram Corp. v. Commissioner*, 104 T.C. 75 (1995) (same). Therefore, it is necessary to determine whether the approach reflected in Rev. Rul. 90–95 applies where the step transaction doctrine would otherwise apply to treat the transaction as an asset acquisition that qualifies as a reorganization under § 368(a).

Rev. Rul. 90–95 and § 1.338–3(d) reject the approach reflected in Rev. Rul. 67–274 where the application of that approach would treat the purchase of a target corporation's stock without a § 338 election followed by the liquidation or merger of the target corporation as the purchase of the target corporation's assets resulting in a cost basis in the assets under § 1012. The rejection of step integration in Rev. Rul. 90–95 and § 1.338–3(d) is based on Congressional intent that § 338 "replace any nonstatutory treatment of a stock purchase as an asset purchase under the *Kimbell-Diamond* doctrine." H.R. Rep. No. 760, 97th Cong., 2d Sess. 536 (1982), 1982–2 C.B. 600, 632. (In *Kimbell-Diamond Milling Co. v. Commissioner*, 14 T.C. 74, *aff'd per curiam*, 187 F.2d 718 (1951), *cert. denied*, 342 U.S. 827 (1951), the court held that the purchase of the stock of a target corporation for the purpose of obtaining its assets through a prompt liquidation should be treated by the purchaser as a purchase of the target corporation's assets with the purchaser receiving a cost basis in the assets.) Rev. Rul. 90–95 and § 1.338–3(d) treat the acquisition of the stock of the target corporation as a qualified stock purchase followed by a separate carryover basis transaction in order to preclude any nonstatutory treatment of the steps as an integrated asset purchase.

The policy underlying § 338 is not violated by treating Situation (1) as a single statutory merger of T into X because such treatment results in a transaction that qualifies as a reorganization under § 368(a)(1)(A) in which X acquires the assets of T with a carryover basis under § 362, and does not result in a cost basis for those assets under § 1012. Thus, in Situation (1), the step transaction doctrine applies to treat the Acquisition Merger and the Upstream Merger not as a stock acquisition that is a qualified stock purchase followed by a § 332 liquidation, but instead as an acquisition of T's assets through a single statutory merger of T into X that qualifies as a reorganization under § 368(a)(1)(A). Accordingly, a § 338 election may not be made in such a situation.

Situation (2)

Situation (2) differs from Situation (1) only in that the Acquisition Merger, if viewed independently of the Upstream Merger, would qualify as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(E). This difference does not change the result from that in Situation (1). The transaction is treated as a single statutory merger of T into X that qualifies as a reorganization under § 368(a)(1)(A) without regard to § 368(a)(2)(E).

HOLDING

Under the facts presented, if, pursuant to an integrated plan, a newly formed wholly owned subsidiary of an acquiring corporation merges into a target corporation, followed by the merger of the target corporation into the acquiring corporation, the transaction is treated as a single statutory merger of the target corporation into the acquiring corporation that qualifies as a reorganization under § 368(a)(1)(A).

APPLICATION

Pursuant to § 7805(b)(8), the Service will not apply the principles of this revenue ruling to challenge a taxpayer's position with respect to the treatment of a multi-step transaction, one step of which, viewed independently, is a qualified stock purchase if:

(1) a timely (including extensions) and valid (without regard to whether there was a qualified stock purchase under the principles of this revenue ruling) election under § 338(h)(10) or § 338(g) (Election) is or was filed with respect to the acquisition of the stock of the target corporation; and

(2) either

(a) the acquisition date for the target corporation is on or before September 24, 2001; or

(b) the acquisition of stock of the target corporation meeting the requirements of § 1504(a)(2) by the purchasing corporation is pursuant to a written agreement that (subject to customary conditions) is binding on September 24, 2001, and at all times thereafter until the acquisition date; and

(3) such taxpayer does not take a position for U.S. tax purposes that is inconsistent with the treatment of the acquisition as a qualified stock purchase with respect to which the Election was made.

Further, the Service and the Treasury are considering whether to issue regulations that would reflect the general principles of this revenue ruling, but would allow taxpayers to make a valid election under § 338(h)(10) with respect to a step of a multi-step transaction that, viewed independently, is a qualified stock purchase if such step is pursuant to a written agreement that requires, or permits the purchasing corporation to cause, a § 338(h)(10) election in respect of such step to be made. The Service and the Treasury request comments regarding the adoption of such an approach.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 67–274 is amplified and Rev. Rul. 90–95 is distinguished.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Reginald Mombrun and Joseph M. Calianno of the Office of the Associate Chief Counsel (Corporate). For further information regarding this revenue ruling, contact Mr. Mombrun at (202) 622-7750 (not a toll-free call) or Mr. Calianno at (202) 622-7930 (not a toll-free call).

Section 472.—Last-in, First-out Inventories

26 CFR 1.472–1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The August 2001 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, August 31, 2001.

Rev. Rul. 2001–45

The following Department Store Inventory Price Indexes for August 2001 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472–1(k) of the Income Tax Regulations and Rev. Proc. 86–46 (1986–2 C.B. 739), for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, August 31, 2001.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups - soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

Groups	Aug. 2000	Aug. 2001	Percent Change from Aug. 2000 to Aug. 2001[1]
1. Piece Goods	509.2	485.7	–4.6
2. Domestics and Draperies	617.9	591.8	–4.2
3. Women's and Children's Shoes	618.3	655.4	6.0
4. Men's Shoe	913.2	856.4	–6.2
5. Infants' Wear	619.8	609.5	–1.7
6. Women's Underwear	570.2	567.5	–0.5
7. Women's Hosiery	334.7	354.8	6.0
8. Women's and Girls' Accessories	532.0	547.2	2.9
9. Women's Outerwear and Girls' Wear	370.5	361.6	–2.4
10. Men's Clothing	605.4	579.2	–4.3
11. Men's Furnishings	612.9	583.9	–4.7
12. Boys' Clothing and Furnishings	473.0	469.2	–0.8
13. Jewelry	936.5	936.3	0.0
14. Notions	785.9	793.0	0.9
15. Toilet Articles and Drugs	971.0	969.9	–0.1
16. Furniture and Bedding	687.9	633.9	–7.8
17. Floor Coverings	603.2	623.8	3.4
18. Housewares	778.5	767.6	–1.4
19. Major Appliances	230.9	226.9	–1.7
20. Radio and Television	58.8	53.4	–9.2
21. Recreation and Education[2]	92.2	89.3	–3.1
22. Home Improvements[2]	129.2	125.8	–2.6
23. Auto Accessories[2]	106.2	109.4	3.0
Groups 1 – 15: Soft Goods	585.3	575.5	–1.7
Groups 16 – 20: Durable Goods	437.2	421.8	–3.5
Groups 21 – 23: Misc. Goods[2]	99.8	98.2	–1.6
Store Total[3]	529.7	518.8	–2.1

[1] Absence of a minus sign before the percentage change in this column signifies a price increase.
[2] Indexes on a January 1986=100 base.
[3] The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael Burkom of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Burkom at (202) 622-4930 (not a toll-free call).

Section 872. — Gross Income

(Also sections 883, 894.)
26 CFR 1.872–2: Exclusions from gross income of nonresident alien individuals.
(Also 26 CFR 1.883–1.)

This revenue ruling updates the list of countries that grant a reciprocal exemption for income from the international operation of ships or aircraft to U.S. persons for purposes of sections 872(b) and 883 of the Code.

Rev. Rul. 2001–48

PURPOSE

The purpose of this revenue ruling is to assist foreign persons who derive income from the international operation of ships or aircraft in determining whether such income is exempt from U.S. taxation under section 872(b) or 883(a) of the Internal Revenue Code of 1986, by providing a current list of countries that grant United States persons equivalent exemptions from tax for various categories of income from the international operation of ships and aircraft. This revenue ruling modifies and supersedes Rev. Rul. 89–42 (1989–1 C.B. 234), as supplemented by Rev. Rul. 97–31 (1997–2 C.B. 77).

Section 872(b) of the Code provides that gross income shall not include income from the international operation of a ship or ships or aircraft, and such income shall be exempt from U.S. Federal income taxation, if the income is derived by an individual resident of a foreign country, and such foreign country grants an equivalent exemption to individual residents of the United States. Section 883(a) provides a similar exemption for such income derived by corporations organized in a foreign country that grants

an equivalent exemption to corporations organized in the United States. For purposes of sections 872(b) and 883(a), a foreign country may grant an equivalent exemption from tax through an exchange of diplomatic notes or other agreement, by not imposing a tax on income from the international operation of ships or aircraft, or by a decree or specific statutory exemption.

Part A of Table I provides a list of the countries that grant exemptions through diplomatic notes exchanged with the United States.

Part B of Table I provides a list of the countries for which the Service has determined, upon examination of their domestic law, that an equivalent exemption is granted by statute or decree, or by not imposing a tax on income from the international operation of ships or aircraft. This determination is made on a country-by-country basis and relies upon information submitted to the Internal Revenue Service by the foreign country regarding the foreign law in effect at the time of the submission. The date of the Service's review is reflected in the first column of Part B of Table I. Since its initial review, the Service has not attempted to determine whether any of the foreign laws of the countries listed in Part B of Table I have been amended or repealed. Therefore, taxpayers should independently verify the accuracy of the information in Part B of Table I at such time that a determination is relevant.

Part B of Table I does not represent an exclusive list of countries the domestic law of which provides an equivalent exemption. Other countries that have not submitted the information necessary for the Service to make a determination also may grant an equivalent exemption. In those cases, an individual resident of, or a corporation organized in, such a foreign country may be treated as a resident of, or a corporation organized in, a foreign country that grants an equivalent exemption, even though the foreign country is not included in Part B of Table I. Consistent with past practice, the Service will entertain a request from a foreign government to determine whether the domestic law of the country provides an equivalent exemption. Accordingly, taxpayers may seek to have the relevant foreign government request a determination that the particular country qualifies as an equivalent-exemption jurisdiction.

Table II provides a list of countries that grant an exemption under the shipping and aircraft article or capital gains article of an income tax convention to which the United States is a party. Table II is provided to assist a foreign corporation organized in one of the countries listed in Table I in demonstrating that it also meets the ownership requirements of section 883(c). In general, a foreign corporation can demonstrate that it meets the ownership requirements of section 883(c) if the corporation can show that more than 50 percent of the value of the stock of the corporation is owned by individuals who are residents of countries that grant an equivalent exemption to corporations organized in the United States. For the sole purpose of determining if an individual shareholder's country of residence grants an equivalent exemption for purposes of section 883(c), a foreign country will also be considered to grant an equivalent exemption if it grants such an exemption through an income tax convention with the United States.

Accordingly, Table II is relevant only in determining whether a shareholder of a foreign corporation seeking an exemption from tax under section 883 is a shareholder that qualifies under section 883(c)(1) because the shareholder's country of residence grants an equivalent exemption under an income tax convention with the United States. Table II is not relevant in determining whether a nonresident alien individual or a foreign corporation itself is eligible to claim an exemption under section 872(b) or 883(a), respectively.

Table II includes a summary of the requirements for the exemption, such as whether the exemption is based solely on residence, or, as in the case of certain older income tax conventions, the exemption has an additional requirement of documentation or registration. Table II does not set forth other benefits relating to a shipping or an air transport business that may be provided under articles covering business profits, rentals and royalties, and other income because such benefits are not relevant for purposes of section 883(c).

These Tables are intended only as a summary. The full text of any relevant diplomatic note, foreign law, or income tax convention should be consulted. It may be necessary to consult the technical explanation of an income tax convention, including any protocol thereto, any agreement, or any diplomatic note accompanying a convention, to determine the items of income exempted. Income tax conventions and diplomatic notes are published in the Cumulative Bulletin and Internal Revenue Bulletins. These Tables will continue to be updated periodically.

CHANGES TO REV. RUL. 97–31

The changes to the table published in Rev. Rul. 89–42, as supplemented by Rev. Rul. 97–31, are summarized below.

The table in the prior rulings has been reorganized to clarify the limited relevance of Part I of that table, relating to treaties, as discussed above. Accordingly, in this revenue ruling Part II of the prior table (diplomatic notes) has become Part A of Table I; Part III (domestic law) of the prior table has become Part B of Table I; and Part I of the prior table (treaties) has become Table II.

In Part A of Table I, Bahrain, Ethiopia, Saudi Arabia, and the United Arab Emirates have been added to the list of countries that have exchanged diplomatic notes with the United States. Although a diplomatic note was signed with Bolivia in November 1987, that note required ratification by the Bolivian Government to enter into force. The diplomatic note was ratified on March 24, 1999, and officially became effective upon publication in the official Gazette on March 31, 1999, for income earned after that date. Therefore, Bolivia also has been added to the list.

In Part B of Table I, Aruba, Peru (with respect to aircraft), and the Republic of Surinam have been added to the list of countries whose domestic law has been determined to provide an equivalent exemption.

In Table II, the following countries have been added to the list of countries that provide an exemption under an income tax convention: Estonia, Latvia, Lithuania, Slovenia, South Africa, Thailand, Turkey, the Ukraine, and Venezuela. The following countries have entered into new income tax conventions with the United States that supersede prior income tax conventions reported in Rev. Rul. 97–31: Austria, Denmark, Ireland, Luxembourg, and Switzerland.

TO CLAIM AN EXEMPTION

Taxpayers claiming an exemption from U.S. Federal income tax under section 872(b) of the Code must file a return on Form 1040NR (*U.S. Income Tax Return of a Nonresident Alien*). Taxpayers claiming an exemption from U.S. Federal income tax under section 883 must file a return on Form 1120F (*U.S. Income Tax Return of a Foreign Corporation*). Both must comply with the relevant provisions of section 8 of Rev. Proc. 91–12 (1991–1 C.B. 473).

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 97–31 and Rev. Rul. 89–42 are modified and superseded.

DRAFTING INFORMATION

The principal author of this revenue ruling is Patricia A. Bray of the Office of Associate Chief Counsel (International). For information regarding this revenue ruling, contact Ms. Bray at (202) 622-3880 (not a toll-free call).

TABLE I

Countries Currently Granting Equivalent Exemptions For Income From The International Operation of Ships and Aircraft

PART A - EXCHANGE OF NOTES[1]

		TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED[2]				
Countries and Territories	**Cumulative Bulletin Or Internal Revenue Bulletin Citation**	**Operating Income**	**Full Rental (Time or voyage charter)**	**Bare-Boat Rental**	**Container Rental[3]**	**Capital Gains[3]**
Argentina	**1988-1 C.B. 456**	**X**	**X**	**X**	**X**	**X**
Bahamas	**1988-1 C.B. 458**	**X**	**X**	**X**	**X**	**-**
Bahrain	**2000-46 I.R.B. 475**	**X**	**X**	**X**	**X**	**X**
Belgium	**1988-1 C.B. 459**	**X**	**X**	**-**	**X**	**-**
Bolivia[4]	**1988-1 C.B. 460**	**X**	**X**	**X**	**X**	**-**
Chile[5]	**1991-1 C.B. 304**	**X**	**X**	**X[3]**	**X**	**-**
Colombia	**1988-1 C.B. 461**	**X**	**X**	**X**	**X**	**-**
Cyprus	**1989-2 C.B. 332**	**X**	**X**	**X**	**X**	**-**
Denmark	**1988-1 C.B. 462**	**X**	**X**	**X**	**X**	**-**
El Salvador[5]	**1988-1 C.B. 463**	**X**	**X**	**X**	**X**	**X**
Ethiopia	**1999-1 C.B. 1134**	**X**	**X**	**X**	**X**	**X**
Fiji	**1996-2 C.B. 202**	**X**	**X**	**X**	**X**	**X**
Finland	**1989-2 C.B. 334**	**X**	**X**	**X**	**X**	**-**
Greece	**1988-2 C.B. 366**	**X**	**X**	**X**	**X**	**-**
Hong Kong[6/7]	**1995-1 C.B. 228**	**X**	**X**	**X**	**X**	**X**
India	**1990-2 C.B. 316**	**X**	**X**	**X[3]**	**X**	**X**
Isle of Man[6]	**1990-2 C.B. 317**	**X**	**X**	**X**	**X**	**X**
Japan	**1990-2 C.B. 318**	**X**	**X**	**X**	**X**	**-**
Jordan	**1996-2 C.B. 202**	**X**	**X**	**X**	**X**	**-**
Liberia	**1988-1 C.B. 463**	**X**	**X**	**X**	**X**	**X**
Luxembourg	**1996-2 C.B. 203**	**X**	**X**	**X**	**X**	**-**
Malaysia	**1990-2 C.B. 319**	**X**	**X**	**X[3]**	**X**	**X**

TABLE I—Continued

Countries Currently Granting Equivalent Exemptions For Income From The International Operation of Ships and Aircraft

PART A - EXCHANGE OF NOTES[1]

Countries and Territories	Cumulative Bulletin Or Internal Revenue Bulletin Citation	TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED[2] Operating Income	Full Rental (Time or voyage charter)	Bare-Boat Rental	Container Rental[3]	Capital Gains[3]
Malta	1997-1 C.B. 314	X	X	X	X	X
Marshall Islands	1990-2 C.B. 321	X	X	X	X	X
Norway	1991-1 C.B. 304	X	X	X	X	X
Pakistan[6]	1991-1 C.B. 305	X[8]	-	-	-	-
Panama	1988-2 C.B. 366	X	X	X	X	-
Peru[6]	1989-2 C.B. 335	X	X	X[3]	X	-
Saudi Arabia[9]	2000-22 I.R.B. 1126	X	X	X	X	X
St. Vincent & Grenadines	1989-2 C.B. 336	X	X	X	X	-
Singapore	1990-2 C.B. 323	X	X	X	X	-
Sweden	1988-1 C.B. 466	X	X	X[3]	X	-
Taiwan	1989-2 C.B. 337	X	X	X	X	-
United Arab Emirates	1998-2 C.B. 528	X	X	X	X	X
Venezuela	1988-1 C.B. 467	X	X	X[3]	X	X

PART B - DOMESTIC LAW

Countries and Territories	Date Foreign Law Reviewed	TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED[2] Operating Income	Full Rental (Time or voyage charter)	Bare-Boat Rental	Container Rental[3]	Capital Gains[3]
Antigua & Barbuda[6]	NOV 1991	X	X	X	X	X
Aruba	JUNE 1999	X	X	X	X	-
Barbados	OCT 1989	X	X	X	X	X
Bermuda	NOV 1988	X	X	X	X	X
Brazil[10]	DEC 1988	X	X	X[3]	X	-
Bulgaria	FEB 1989	X	X	X	X	X
Cayman Islands[11]	JAN 1987	X	X	X	X	X
Chile[6]	OCT 1988	X	X	X	X	X
Ecuador[6/12]	DEC 1989	X	X	X[3]	X	X
Israel	FEB 1991	X	X	X	X	X

TABLE I—Continued

Countries Currently Granting Equivalent Exemptions For Income From The International Operation of Ships and Aircraft

PART B - DOMESTIC LAW—Continued

Countries and Territories		Date Foreign Law Reviewed	*TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED*[2] Operating Income	Full Rental (Time or voyage charter)	Bare-Boat Rental	Container Rental[3]	Capital Gains[3]
Netherlands		OCT 1988	X	X	X[3]	X	-
Netherlands Antilles		MAY 1988	X	X	X	X	X
Peru[5]		SEPT 1995	X	X	X	X	X
Portugal[10]	Ships	JUNE 1989	X	X	X	-	-
	Aircraft	FEB 1989	X	X	X	-	-
Qatar[5]		AUG 1994	X[8]	-	-	-	-
Spain[13]		DEC 1988	X	X	-	X	-
Surinam		NOV 1999	X	X	X	X	X
Turkey[14]		JAN 1987	X	-	-	X	-
Turks & Caicos[11]		FEB 1990	X	X	X	X	X
U.S. Virgin Islands		OCT 1988	X	X	X	X	X
Vanuatu		MAY 1987	X	X	X	X	X

TABLE II

Countries Currently Granting by Income Tax Convention Equivalent Exemptions For Purposes of Qualifying a Shareholder Under Section 883(c)(1)[15]

Countries and Territories	*BASIS FOR EXEMPTION* Residence Based No Flag	Residence & Flag Reciprocal	Residence & Flag Unilateral	*TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED*[2] Operating Income	Full Rental (Time or voyage charter)	Bare-Boat Rental	Container Rental	Capital Gains
Australia	X			X	X[16]	X[17]	X[17]	X[3/18]
Austria[19]	X			X	X[20]	X[20]	X	X
Barbados	X			X	X[20]	X[20]	X	X
Belgium		X[21]		X	X[3]	X[3]	X[3]	X[3]
Canada	X			X	X	X	X	X
China[22] (Peoples Republic)	X			X	X[20]	X[20]	X	X
Cyprus	X			X	X[20]	X[20]	X	X

TABLE II—Continued

Countries Currently Granting by Income Tax Convention Equivalent Exemptions For Purposes of Qualifying a Shareholder Under Section 883(c)(1)[15]

	BASIS FOR EXEMPTION			*TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED[2]*				
Countries and Territories	**Residence Based No Flag**	**Residence & Flag Reciprocal**	**Residence & Flag Unilateral**	**Operating Income**	**Full Rental (Time or voyage charter)**	**Bare-Boat Rental**	**Container Rental**	**Capital Gains**
Czech Republic	X			X	X	X[3]	X	X
Denmark[19]	X			X	X	X[20]	X	X
Egypt	X			X	X[3]	X[3]	X[3]	-
Estonia[19]	X			X	X	X[3]	X	X
Finland	X			X	X[3]	X[3]	X[23]	X
France	X			X	X	X[20]	X[3]	X[3]
Germany[24]	X			X	X	-	X	X
Greece		X		X[8]	-	-	-	-
Hungary	X			X	X[3]	X[3]	X	X
Iceland			X[25]	X	X[3]	X[3]	X[3]	X
India	X			X	X[3]	X[3]	X	X[3/26]
Indonesia	X			X	X	X[27]	X[3]	X
Ireland[19]	X			X	X	X[20]	X	X
Israel	X			X	X[3]	X[3]	X[3]	X[3]
Italy[28/29]			X[25]	X	X[30]	X[3]	X	X[3]
Jamaica	X			X	X[20]	X[20]	X	X[3]
Japan[28]		X[31]		X	X[3]	X[3]	X[3]	X[3]
Kazakhstan	X			X	X	X[20]	X	X
Korea	X			X	X[32]	-	X[3]	-
Latvia[19]	X			X	X	X[17]	X	X
Lithuania[19]	X			X	X	X[17]	X[3]	X
Luxembourg[19]	X			X	X	X[20]	X	X
Mexico	X			X	X	X[23]	X	X
Morocco		X[21]		X[8]	-	-	-	X[3]
Netherlands	X			X	X[3]	X[3]	-	X
New Zealand	X			X	X	X[3]	X[3]	X[18]
Norway[28]	X			X	X[32]	X[3]	X[3]	X
Pakistan[5]		X		X[8]	-	-	-	-
Philippines[6]	X			-	-	-	-	X[3]

TABLE II—Continued

Countries Currently Granting by Income Tax Convention Equivalent Exemptions For Purposes of Qualifying a Shareholder Under Section 883(c)(1)[15]

	BASIS FOR EXEMPTION			*TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED*[2]				
Countries and Territories	**Residence Based No Flag**	**Residence & Flag Reciprocal**	**Residence & Flag Unilateral**	**Operating Income**	**Full Rental (Time or voyage charter)**	**Bare-Boat Rental**	**Container Rental**	**Capital Gains**
Poland			X[25]	X	X[3]	X[3]	X[3]	X
Portugal	X			X	X	X[3]	-	X
Romania		X		X	X[3]	X[3]	X[3]	X
Russian Federation	X			X	X	X[20]	X	X
Slovak Republic	X			X	X	X[3]	X	X
Slovenia[19]	X			X	X	X[20]	X	X
South Africa[19]	X			X	X	X[20]	X	X
Spain	X			X	X	X[3]	X	X
Sweden	X			X	X	X[3]	X	X
Switzerland[19]	X			X	X[33]	X[3]	-	X
Thailand[19]	X[5] X[6]			X -	X -	X[3] -	X[3] -	X X
Trinidad & Tobago			X[25]	X	X[3]	X[3]	-	X
Tunisia	X			X	X[20]	X[20]	X[3]	X
Turkey[19]	X			X	X	X[3]	X	X
Ukraine[19]	X			X	X	X[20]	X	X[3]
USSR/NIS[34]		X		X[8]	-	-	-	X[3]
U.K.[29]			X[25]	X	X	X[3]	X	X[3]
Venezuela[19]	X			X	X	X[20]	X	X

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[1] Notes signed prior to the Technical and Miscellaneous Revenue Act of 1988 will be interpreted in accordance with Technical Corrections enacted by that Act.
[2] Unless otherwise footnoted, an "X" indicates full exemption whether or not there is a permanent establishment.
[3] The tax exemption is available only if the income is incidental to operating income.
[4] The note was ratified by the Bolivian Congress and signed by the Bolivian President. The note and exemption officially became effective upon publication in the official Gazette on March 31, 1999, for income earned after that date.
[5] This exemption applies to aircraft only.
[6] This exemption applies to shipping only.
[7] This diplomatic note applies to Hong Kong before July 1, 1997, and pursuant to Notice 97-40 (1997-2 C.B. 287), to the Hong Kong Special Administrative Region of the People's Republic of China on or after July 1, 1997. The note does not apply with respect to the People's Republic of China, which will continue to be treated as a separate country for purposes of the Internal Revenue Code.
[8] Operating income is not defined.
[9] The note is effective for all taxable years beginning on or after January 1, 1999, and for all prior open taxable years.

[10] Brazilian and Portuguese statutes exempt only companies.
[11] The country generally imposes no income tax.
[12] This exemption is generally effective for all open years beginning on or after January 1, 1987.
[13] The Spanish statute exempts only corporations.
[14] See generally Rev. Rul. 87-18 (1987-1 C.B. 178) (explaining the application of Turkey's domestic-law exemption).
[15] Table II is relevant only in determining whether a shareholder of a foreign corporation seeking an exemption from tax under section 883 is a shareholder that qualifies under section 883(c)(1) because the shareholder's country of residence grants an equivalent exemption under an income tax convention with the United States. Table II is not relevant in determining whether a nonresident alien individual or foreign corporation itself is eligible to claim an exemption under section 872(b) or 883(a), respectively.
[16] Lessor must either regularly lease ships or aircraft on a full basis or operate them in international traffic.
[17] This exemption applies if the ships or aircraft are operated in international traffic by the lessee, and the rental income is incidental to the operation of ships or aircraft in international traffic by the lessor.
[18] Except to the extent depreciation has been allowed in the other country.
[19] The following income tax treaties were ratified after the publication of Rev. Rul. 97-31 and are generally effective on the following dates:

Austria	January 1, 1999
Denmark	January 1, 2001
Estonia	January 1, 2000
Ireland	January 1, 1998
Latvia	January 1, 2000
Lithuania	January 1, 2000
Luxembourg	January 1, 2001
Slovenia	January 1, 2002
South Africa	January 1, 1998
Switzerland	January 1, 1998
Thailand	January 1, 1998
Turkey	January 1, 1998
Ukraine	January 1, 2001
Venezuela	January 1, 2000

The U.S.-Slovenia tax treaty entered into force on June 22, 2001. The treaty applies, with respect to taxes withheld at source, in respect of amounts paid or credited on or after September 1, 2001, and, with regard to other taxes, in respect of taxable years beginning on or after January 1, 2002.
[20] This exemption applies if the ships or aircraft are operated in international traffic by the lessee, or the rental income is incidental to the operation of ships or aircraft in international traffic by the lessor.
[21] In the case of aircraft only, the registration may be in the country of residence or in any country with a treaty providing a reciprocal exemption between such country and the country of residence.
[22] Pursuant to Notice 97-40 (1997-2 C.B. 287), the treaty between the United States and the People's Republic of China (China) will continue to apply only to China and will not apply to the Hong Kong Special Administrative Region of the People's Republic of China.
[23] The exemption applies except where the containers are used solely between places within the other Contracting State.
[24] This treaty is effective for the eastern States of Germany (the former East Germany) from January 1, 1991.
[25] Documentation or registration required for ships or aircraft of United States residents only.
[26] This treaty exempts gains derived by an enterprise of a Contracting State if the ships, aircraft or containers are owned and operated by the enterprise and the income from them is taxable only in that State.
[27] Income from the bareboat rental of aircraft used in international traffic is exempt. Income from the bareboat rental of ships also is exempt if the ship is operated in international traffic and if the lessee is not a resident of, or does not have a permanent establishment in, the other Contracting State.
[28] See also the diplomatic notes or protocol accompanying this treaty.
[29] The United States has entered into new treaties with Italy and the United Kingdom, but neither treaty has entered into force as of the date of publication of this ruling.
[30] This exemption applies if the ship or aircraft is operated in international traffic or if the rental income is incidental to income from such international operation.
[31] With regard to residents of Japan, the ships or aircraft need not be registered in Japan if the ships or aircraft are leased by such a resident.
[32] As a result of correspondence, it was clarified that income from the international operation of ships or aircraft includes this category of income.
[33] This exemption applies if the ships or aircraft are used by the lessee in international traffic.
[34] The U.S. - U.S.S.R. income tax treaty signed June 20, 1973, continues to apply to the New Independent States (NIS) of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

Section 883.—Exclusions From Gross Income

This revenue ruling updates the Table of countries that grant a reciprocal exemption for income from the international operation of ships or aircraft to U.S. persons for purposes of sections 872(b) and 883 of the Code. See Rev. Rul. 2001–48, page 324.

Section 894.—Income Affected By Treaty

This revenue ruling updates the Table of countries that grant a reciprocal exemption for income from the international operation of ships or aircraft to U.S. persons for purposes of sections 872(b) and 883 of the Code. See Rev. Rul. 2001–48, page 324.

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, §§ 62, 162, 267, 274; 1.62–2, 1.162–17, 1.267(a)–1, 1.274–5.)

Rev. Proc. 2001–47

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 2000–39 (2000–41 I.R.B. 340), by providing rules under which the amount of ordinary and necessary business expenses of an employee for lodging, meal, and incidental expenses or for meal and incidental expenses incurred while traveling away from home will be deemed substantiated under § 1.274–5 of the Income Tax Regulations when a payor (the employer, its agent, or a third party) provides a *per diem* allowance under a reimbursement or other expense allowance arrangement to pay for such expenses. This revenue procedure also provides an optional method for employees and self-employed individuals to use in computing the deductible costs of business meal and incidental expenses paid or incurred while traveling away from home. Use of a method described in this revenue procedure is not mandatory, and a taxpayer may use actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence for proper substantiation. This revenue procedure does not provide rules under which the amount of an employee's lodging expenses will be deemed substantiated when a payor provides an allowance to pay for those expenses but not meal and incidental expenses.

SECTION 2. BACKGROUND AND CHANGES

.01 Section 162(a) of the Internal Revenue Code allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Under that provision, an employee or self-employed individual may deduct expenses paid or incurred while traveling away from home in pursuit of a trade or business. However, under § 262, no portion of such travel expenses that is attributable to personal, living, or family expenses is deductible.

.02 Section 274(n) generally limits the amount allowable as a deduction under § 162 for any expense for food, beverages, or entertainment to 50 percent of the amount of the expense that otherwise would be allowable as a deduction. In the case of any expenses for food or beverages consumed while away from home (within the meaning of § 162(a)(2)) by an individual during, or incident to, the period of duty subject to the hours of service limitations of the Department of Transportation, § 274(n)(3) gradually increases the deductible percentage to 80 percent for taxable years beginning in 2008. For taxable years beginning in 2001, the deductible percentage for these expenses is 60 percent. For taxable years beginning in 2002, the deductible percentage for these expenses is 65 percent.

.03 Section 274(d) provides, in part, that no deduction shall be allowed under § 162 for any traveling expense (including meals and lodging while away from home) unless the taxpayer complies with certain substantiation requirements. The section further provides that regulations may prescribe that some or all of the substantiation requirements do not apply to an expense that does not exceed an amount prescribed by such regulations.

.04 Section 1.274–5(g) of the regulations, in part, grants the Commissioner the authority to prescribe rules relating to reimbursement arrangements or *per diem* allowances for ordinary and necessary expenses paid or incurred while traveling away from home. Pursuant to this grant of authority, the Commissioner may prescribe rules under which such arrangements or allowances, if in accordance with reasonable business practice, will be regarded (1) as equivalent to substantiation, by adequate records or other sufficient evidence, of the amount of such travel expenses for purposes of § 1.274–5(c), and (2) as satisfying the requirements of an adequate accounting to the employer of the amount of such travel expenses for purposes of § 1.274–5(f).

.05 For purposes of determining adjusted gross income, § 62(a)(2)(A) allows an employee a deduction for expenses allowed by Part VI (§ 161 and following), subchapter B, chapter 1 of the Code, paid or incurred by the employee in connection with the performance of services as an employee under a reimbursement or other expense allowance arrangement with a payor.

.06 Section 62(c) provides that an arrangement will not be treated as a reimbursement or other expense allowance arrangement for purposes of § 62(a)(2)(A) if it—

(1) does not require the employee to substantiate the expenses covered by the arrangement to the payor, or

(2) provides the employee with the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

Section 62(c) further provides that the substantiation requirements described therein shall not apply to any expense to the extent that, under the grant of regulatory authority prescribed in § 274(d), the Commissioner has provided that substantiation is not required for such expense.

.07 Under § 1.62–2(c)(1) a reimbursement or other expense allowance arrangement satisfies the requirements of § 62(c) if it meets the requirements of business connection, substantiation, and returning amounts in excess of expenses as specified in the regulations. Section 1.62–2(e)(2) specifically provides that substantiation of certain business expenses in accordance with rules prescribed under the authority of § 1.274–5(g) or 1.274–5(j)(1) will be treated as substantiation of the amount of such expenses for purposes of § 1.62–2. Under § 1.62–2(f)(2), the Commissioner may prescribe rules under which an arrangement providing *per diem* allowances will be treated as satisfying the requirement of returning amounts in excess of expenses, even though the arrangement does not require the employee to return the portion of such an allowance that relates to days of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated pursuant to rules prescribed under § 274(d), provided the allowance is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses and the employee is required to return any portion of such an allowance that relates to days of travel not substantiated.

.08 Section 1.62–2(h)(2)(i)(B) provides that if a payor pays a *per diem* allowance

that meets the requirements of § 1.62–2(c)(1), the portion, if any, of the allowance that relates to days of travel substantiated in accordance with § 1.62–2(e), that exceeds the amount of the employee's expenses deemed substantiated for such travel pursuant to rules prescribed under § 274(d) and § 1.274–5(g) or § 1.274–5(j)(1), and that the employee is not required to return, is subject to withholding and payment of employment taxes. See §§ 31.3121(a)–3, 31.3231(e)–1(a)(5), 31.3306(b)–2, and 31.3401(a)–4 of the Employment Tax Regulations. Because the employee is not required to return this excess portion, the reasonable period of time provisions of § 1.62–2(g) (relating to the return of excess amounts) do not apply to this portion.

.09 Under § 1.62–2(h)(2)(i)(B)(*4*), the Commissioner may, in his or her discretion, prescribe special rules regarding the timing of withholding and payment of employment taxes on *per diem* allowances.

.10 Section 1.274–5(j)(1) grants the Commissioner the authority to establish a method under which a taxpayer may elect to use a specified amount for meals paid or incurred while traveling away from home in lieu of substantiating the actual cost of meals.

.11 Section 5.04 of this revenue procedure contains revisions to the list of high-cost localities and to the high-low rates for purposes of section 5.

.12 Sections 3.02, 4.04(5), and 5.06 provide transition rules for the last 3 months of calendar year 2001 due to changes in the effective date of the CONUS rates published by GSA.

SECTION 3. DEFINITIONS

.01 *Per diem allowance.* The term "*per diem* allowance" means a payment under a reimbursement or other expense allowance arrangement that meets the requirements specified in § 1.62–2(c)(1) and that is

(1) paid with respect to ordinary and necessary business expenses incurred, or which the payor reasonably anticipates will be incurred, by an employee for lodging, meal, and incidental expenses or for meal and incidental expenses for travel away from home in connection with the performance of services as an employee of the employer,

(2) reasonably calculated not to exceed the amount of the expenses or the anticipated expenses, and

(3) paid at or below the applicable federal *per diem* rate, a flat rate or stated schedule, or in accordance with any other Service-specified rate or schedule.

.02 *Federal per diem rate and federal M&IE rate.*

(1) *General rule.* The federal *per diem* rate is equal to the sum of the applicable federal lodging expense rate and the applicable federal meal and incidental expense (M&IE) rate for the day and locality of travel.

(a) *CONUS rates.* The rates for localities in the continental United States ("CONUS") are set forth in Appendix A to 41 C.F.R. ch. 301. However, in applying section 4.01, 4.02, or 4.03 of this revenue procedure, taxpayers may continue to use the CONUS rates in effect for the first 9 months of 2001 for expenses of all CONUS travel while away from home that are paid or incurred during calendar year 2001 in lieu of the updated GSA rates. A taxpayer must consistently use either these rates or the updated rates for the period of October 1, 2001, through December 31, 2001.

(b) *OCONUS rates.* The rates for localities outside the continental United States ("OCONUS") are established by the Secretary of Defense (rates for non-foreign localities, including Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands, and the possessions of the United States) and by the Secretary of State (rates for foreign localities), and are published in the Per Diem Supplement to the Standardized Regulations (Government Civilians, Foreign Areas) (updated on a monthly basis).

(c) *Internet access to the rates.* The CONUS and OCONUS rates may be found on the Internet at www.policyworks.gov/perdiem.

(2) *Locality of travel.* The term "locality of travel" means the locality where an employee traveling away from home in connection with the performance of services as an employee of the employer stops for sleep or rest.

(3) *Incidental expenses.* The term "incidental expenses" includes, but is not limited to, expenses for laundry, cleaning and pressing of clothing, and fees and tips for services, such as for porters and baggage carriers. The term "incidental expenses" does not include taxicab fares, lodging taxes, or the costs of telegrams or telephone calls.

.03 *Flat rate or stated schedule.*

(1) *In general.* Except as provided in section 3.03(2) of this revenue procedure, an allowance is paid at a flat rate or stated schedule if it is provided on a uniform and objective basis with respect to the expenses described in section 3.01 of this revenue procedure. Such allowance may be paid with respect to the number of days away from home in connection with the performance of services as an employee or on any other basis that is consistently applied and in accordance with reasonable business practice. Thus, for example, an hourly payment to cover meal and incidental expenses paid to a pilot or flight attendant who is traveling away from home in connection with the performance of services as an employee is an allowance paid at a flat rate or stated schedule. Likewise, a payment based on the number of miles traveled (*e.g.*, cents per mile) to cover meal and incidental expenses paid to an over-the-road truck driver who is traveling away from home in connection with the performance of services as an employee is an allowance paid at a flat rate or stated schedule.

(2) *Limitation.* For purposes of this revenue procedure, an allowance that is computed on a basis similar to that used in computing the employee's wages or other compensation (*e.g.*, the number of hours worked, miles traveled, or pieces produced) does not meet the business connection requirement of § 1.62–2(d), is not a *per diem* allowance, and is not paid at a flat rate or stated schedule, unless, as of December 12, 1989, (a) the allowance was identified by the payor either by making a separate payment or by specifically identifying the amount of the allowance, or (b) an allowance computed on that basis was commonly used in the industry in which the employee is employed. See § 1.62–2(d)(3)(ii).

SECTION 4. *PER DIEM* SUBSTANTIATION METHOD

.01 *Per diem allowance.* If a payor pays a *per diem* allowance in lieu of reimbursing actual expenses for lodging, meal, and incidental expenses incurred or to be incurred by an employee for travel away

from home, the amount of the expenses that is deemed substantiated for each calendar day is equal to the lesser of the *per diem* allowance for such day or the amount computed at the federal *per diem* rate (see section 3.02 of this revenue procedure) for the locality of travel for such day (or partial day, see section 6.04 of this revenue procedure).

.02 *Meals only per diem allowance*. If a payor pays a *per diem* allowance only for meal and incidental expenses in lieu of reimbursing actual expenses for meal and incidental expenses incurred or to be incurred by an employee for travel away from home, the amount of the expenses that is deemed substantiated for each calendar day is equal to the lesser of the *per diem* allowance for such day or the amount computed at the federal M&IE rate (see section 3.02 of this revenue procedure) for the locality of travel for such day (or partial day, see section 6.04 of this revenue procedure). A *per diem* allowance is treated as paid only for meal and incidental expenses if (1) the payor pays the employee for actual expenses for lodging based on receipts submitted to the payor, (2) the payor provides the lodging in kind, (3) the payor pays the actual expenses for lodging directly to the provider of the lodging, (4) the payor does not have a reasonable belief that lodging expenses were or will be incurred by the employee, or (5) the allowance is computed on a basis similar to that used in computing the employee's wages or other compensation (*e.g.*, the number of hours worked, miles traveled, or pieces produced).

.03 *Optional method for meals only deduction*. In lieu of using actual expenses, employees and self-employed individuals, in computing the amount allowable as a deduction for ordinary and necessary meal and incidental expenses paid or incurred for travel away from home, may use an amount computed at the federal M&IE rate (see section 3.02 of this revenue procedure) for the locality of travel for each calendar day (or partial day, see section 6.04 of this revenue procedure) the employee or self-employed individual is away from home. Such amount will be deemed substantiated for purposes of paragraphs (b)(2) (travel away from home) and (c) of § 1.274–5, provided the employee or self-employed individual substantiates the elements of time, place, and business purpose of the travel expenses in accordance with those regulations.

.04 *Special rules for transportation industry*.

(1) *In general*. This section 4.04 applies to (a) a payor that pays a *per diem* allowance only for meal and incidental expenses for travel away from home as described in section 4.02 of this revenue procedure to an employee in the transportation industry, or (b) an employee or self-employed individual in the transportation industry who computes the amount allowable as a deduction for meal and incidental expenses for travel away from home in accordance with section 4.03 of this revenue procedure.

(2) *Rates*. A taxpayer described in section 4.04(1) of this revenue procedure may treat $38 as the federal M&IE rate for any locality of travel in CONUS, and/or $42 as the federal M&IE rate for any locality of travel OCONUS. A payor that uses either (or both) of these special rates with respect to an employee must use the special rate(s) for all amounts subject to section 4.02 of this revenue procedure paid to that employee for travel away from home within CONUS and/or OCONUS, as the case may be, during the calendar year. Similarly, an employee or self-employed individual that uses either (or both) of these special rates must use the special rate(s) for all amounts computed pursuant to section 4.03 of this revenue procedure for travel away from home within CONUS and/or OCONUS, as the case may be, during the calendar year. See section 4.04(5) of this revenue procedure for transition rules.

(3) *Periodic rule*. A payor described in section 4.04(1) of this revenue procedure may compute the amount of the employee's expenses that is deemed substantiated under section 4.02 of this revenue procedure periodically (not less frequently than monthly), rather than daily, by comparing the total *per diem* allowance paid for the period to the sum of the amounts computed at the federal M&IE rate(s) for the localities of travel for the days (or partial days, see section 6.04 of this revenue procedure) the employee is away from home during the period. For example, assume an employee in the transportation industry travels away from home within CONUS on 17 days (including partial days, see section 6.04 of this revenue procedure) during a calendar month and receives a *per diem* allowance only for meal and incidental expenses from a payor that uses the special rule under section 4.04(2) of this revenue procedure. The amount deemed substantiated under section 4.02 of this revenue procedure is equal to the lesser of the total *per diem* allowance paid for the month or $646 (17 days at $38 per day).

(4) *Transportation industry defined*. For purposes of this section 4.04 of this revenue procedure, an employee or self-employed individual is "in the transportation industry" only if the employee's or individual's work (a) is of the type that directly involves moving people or goods by airplane, barge, bus, ship, train, or truck, and (b) regularly requires travel away from home which, during any single trip away from home, usually involves travel to localities with differing federal M&IE rates. For purposes of the preceding sentence, a payor must determine that an employee or a group of employees is "in the transportation industry" by using a method that is consistently applied and in accordance with reasonable business practice.

(5) *Transition rules*. Under the calendar-year convention provided in section 4.04(2), a taxpayer who used the federal M&IE rates during the first 9 months of calendar year 2001 to substantiate the amount of an individual's travel expenses under sections 4.02 or 4.03 of Rev. Proc. 2000–39 may not use, for that individual, the special transportation industry rates provided in this section 4.04 until January 1, 2002. Similarly, a taxpayer who used the special transportation industry rates during the first 9 months of calendar year 2001 to substantiate the amount of an individual's travel expenses may not use, for that individual, the federal M&IE rates until January 1, 2002.

SECTION 5. HIGH-LOW SUBSTANTIATION METHOD

.01 *General rule*. If a payor pays a *per diem* allowance in lieu of reimbursing actual expenses for lodging, meal, and incidental expenses incurred or to be incurred by an employee for travel away from home and the payor uses the high-low substantiation method described in this

section 5 for travel within CONUS, the amount of the expenses that is deemed substantiated for each calendar day is equal to the lesser of the *per diem* allowance for such day or the amount computed at the rate set forth in section 5.02 of this revenue procedure for the locality of travel for such day (or partial day, see section 6.04 of this revenue procedure). Except as provided in section 5.06 of this revenue procedure, this high-low substantiation method may be used in lieu of the *per diem* substantiation method provided in section 4.01 of this revenue procedure, but may not be used in lieu of the meals only substantiation method provided in section 4.02 or 4.03 of this revenue procedure.

.02 *Specific high-low rates*. Except as provided in section 5.06 of this revenue procedure, the *per diem* rate set forth in this section 5.02 is $204 for travel to any "high-cost locality" specified in section 5.03 of this revenue procedure, or $125 for travel to any other locality within CONUS. Whichever *per diem* rate applies, it is applied as if it were the federal *per diem* rate for the locality of travel. For purposes of applying the high-low substantiation method and the § 274(n) limitation on meal expenses (see section 6.05 of this revenue procedure), the federal M&IE rate shall be treated as $42 for a high-cost locality and $34 for any other locality within CONUS.

.03 *High-cost localities*. The following localities have a federal *per diem* rate of $165 or more, and are high-cost localities for all of the calendar year or the portion of the calendar year specified in parenthesis under the key city name, except as provided in section 5.06 of this revenue procedure:

Key city	*County or other defined location*
California	
Napa (April 1-November 15)	Napa
Palm Springs (January 1-May 31)	Riverside
San Francisco	San Francisco
San Mateo/Redwood City	San Mateo
Sunnyvale/Palo Alto/San Jose	Santa Clara
Tahoe City	Placer
Colorado	
Aspen (January 1-April 30)	Pitkin
Silverthorne/Keystone	Summit
Telluride (December 20-September 30)	San Miguel
Vail (December 1-March 31)	Eagle
District of Columbia	
Washington, D.C.	Washington, D.C.; the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, in Virginia; and the counties of Montgomery and Prince George's in Maryland
Florida	
Key West (January 1-April 30)	Monroe
Palm Beach (January 1-April 30)	Cities of Boca Raton, Delray Beach, Jupiter, Palm Beach Gardens, Palm Beach Shores, Singer Island, and West Palm Beach
Idaho	
Sun Valley	City limits of Sun Valley
Illinois	
Chicago	Cook and Lake
Louisiana	
New Orleans/St. Bernard (January 1-May 31)	Orleans, St. Bernard, Plaquemine, and Jefferson Parishes
Maine	
Kennebunk/Kittery/Sanford (June 15-October 31)	York

Key city	*County or other defined location*
Maryland	
(For the counties of Montgomery and Prince George's, see District of Columbia)	
Ocean City (June 15-October 31)	Worcester
Massachusetts	
Boston	Suffolk
Cambridge	Middlesex County (except Lowell)
Martha's Vineyard (June 1-October 15)	Dukes
Nantucket (June 15-October 15)	Nantucket
Michigan	
Mackinac Island	Mackinac
Traverse City	Grand Traverse
Montana	
Big Sky	Gallatin (except West Yellowstone Park)
Nevada	
Stateline	Douglas
New Jersey	
Atlantic City (June 1-November 30)	Atlantic
Cape May (June 1-November 30)	Cape May (except Ocean City)
Edison	Middlesex (except Piscataway)
Newark	Essex, Bergen, Hudson and Passaic
Ocean City (June 15-September 15)	City limits of Ocean City
Piscataway/Belle Mead	Somerset; and City limits of Piscataway
Princeton/Trenton	Mercer County
New York	
The Bronx/Brooklyn/Queens	The boroughs of The Bronx, Brooklyn, and Queens
Manhattan	Manhattan
Nassau County/Great Neck	Nassau County
Suffolk County	Suffolk County
White Plains	City limits of White Plains
Pennsylvania	
Hershey (June 1-September 15)	City limits of Hershey
Utah	
Ogden/Layton/Davis County (January 1-February 28)	Weber and Davis
Park City (December 15-March 31)	Summit
Provo (January 15-February 28)	Utah
Salt Lake City (January 15-February 28)	Salt Lake, Dugway Proving Ground, and Tooele Army Depot
Virginia	
(For the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, see District of Columbia)	
Wintergreen	Nelson

.04 *Changes in high-cost localities*. The list of high-cost localities in section 5.03 of this revenue procedure differs from the list of high-cost localities in section 5.03 of Rev. Proc. 2000–39.

(1) The following localities (listed by key cities) have been added to the list of high-cost localities: Napa, California; San Mateo/Redwood City, California; Palm Beach, Florida; Kennebunk/Kittery/Sanford, Maine; Nantucket, Massachusetts; Stateline, Nevada; Atlantic City, New Jersey; Edison, New Jersey; Newark, New Jersey; Ogden/Layton/Davis County, Utah; Provo, Utah; and Salt Lake City, Utah.

(2) The portion of the year for which the following are high-cost localities (listed by key cities) has been changed: Telluride, Colorado; Vail, Colorado; Big Sky, Montana; and Park City, Utah.

(3) The following locality has been removed from the list of high-cost localities: Philadelphia, Pennsylvania.

.05 *Specific limitation*.

(1) Except as provided in section 5.05(2) of this revenue procedure, a payor that uses the high-low substantiation method with respect to an employee must use that method for all amounts paid to that employee for travel away from home within CONUS during the calendar year. See section 5.06 of this revenue procedure for transition rules.

(2) With respect to an employee described in section 5.05(1) of this revenue procedure, the payor may reimburse actual expenses or use the meals only *per diem* method described in section 4.02 of this revenue procedure for any travel away from home, and may use the *per diem* substantiation method described in section 4.01 of this revenue procedure for any OCONUS travel away from home.

.06 *Transition rules*. A payor who used the substantiation method of section 4.01 of Rev. Proc. 2000–39 for an employee during the first 9 months of calendar year 2001 may not use the High-Low Substantiation Method in section 5 of this revenue procedure for that employee until January 1, 2002. A payor who used the High-Low Substantiation Method of section 5 of Rev. Proc. 2000–39 for an employee during the first 9 months of calendar year 2001 must continue to use the High-Low Substantiation Method for the remainder of calendar year 2001 for that employee. A payor described in the previous sentence may use the rates and high-cost localities published in section 5 of Rev. Proc. 2000–39, in lieu of the updated rates and high-cost localities provided in section 5 of this revenue procedure, for travel on or after October 1, 2001, and before January 1, 2002, if those rates and localities are used consistently during this period for all employees reimbursed under this method.

SECTION 6. LIMITATIONS AND SPECIAL RULES

.01 *In general*. The federal *per diem* rate and the federal M&IE rate described in section 3.02 of this revenue procedure for the locality of travel will be applied in the same manner as applied under the Federal Travel Regulations, 41 C.F.R. Part 301–11 (2000), except as provided in sections 6.02 through 6.04 of this revenue procedure.

.02 *Federal per diem rate*. A receipt for lodging expenses is not required in determining the amount of expenses deemed substantiated under section 4.01 or 5.01 of this revenue procedure. See section 7.01 of this revenue procedure for the requirement that the employee substantiate the time, place, and business purpose of the expense.

.03 *Federal per diem or M&IE rate*. A payor is not required to reduce the federal *per diem* rate or the federal M&IE rate for the locality of travel for meals provided in kind, provided the payor has a reasonable belief that meal and incidental expenses were or will be incurred by the employee.

.04 *Proration of the federal per diem or M&IE rate*. Pursuant to the Federal Travel Regulations, in determining the federal *per diem* rate or the federal M&IE rate for the locality of travel, the full applicable federal M&IE rate is available for a full day of travel from 12:01 a.m. to 12:00 midnight. For purposes of determining the amount deemed substantiated under section 4 or 5 of this revenue procedure with respect to partial days of travel away from home, either of the following methods may be used to prorate the federal M&IE rate to determine the federal *per diem* rate or the federal M&IE rate for the partial days of travel:

(1) Such rate may be prorated using the method prescribed by the Federal Travel Regulations. Currently the Federal Travel Regulations allow three-fourths of the applicable federal M&IE rate for each partial day during which the employee or self-employed individual is traveling away from home in connection with the performance of services as an employee or self-employed individual; or

(2) Such rate may be prorated using any method that is consistently applied and in accordance with reasonable business practice. For example, if an employee travels away from home from 9 a.m. one day to 5 p.m. the next day, a method of proration that results in an amount equal to 2 times the federal M&IE rate will be treated as being in accordance with reasonable business practice (even though only 1 1/2 times the federal M&IE rate would be allowed under the Federal Travel Regulations).

.05 *Application of the appropriate § 274(n) limitation on meal expenses*. All or part of the amount of an expense deemed substantiated under this revenue procedure is subject to the appropriate limitation under § 274(n) (see section 2.02 of this revenue procedure) on the deductibility of food and beverage expenses.

(1) When an amount for meal and incidental expenses is computed pursuant to section 4.03 of this revenue procedure, the taxpayer must treat such amount as an expense for food and beverages.

(2) When a *per diem* allowance is paid only for meal and incidental expenses, the payor must treat an amount equal to the lesser of the allowance or the federal M&IE rate for the locality of travel for such day (or partial day, see section 6.04 of this revenue procedure) as an expense for food and beverages.

(3) When a *per diem* allowance is paid for lodging, meal, and incidental expenses, the payor must treat an amount equal to the federal M&IE rate for the locality of travel for each calendar day (or partial day, see section 6.04 of this revenue procedure) the employee is away from home as an expense for food and beverages. For purposes of the preceding sentence, when a *per diem* allowance for lodging, meal, and incidental expenses is paid at a rate that is less than the federal *per diem* rate for the locality of travel for such day (or partial day, see section 6.04 of this revenue procedure), the payor may treat an amount equal to 40 percent of such allowance as the federal M&IE rate

for the locality of travel for such day (or partial day, see section 6.04 of this revenue procedure).

.06 *No double reimbursement or deduction*. If a payor pays a *per diem* allowance in lieu of reimbursing actual expenses for lodging, meal, and incidental expenses or for meal and incidental expenses in accordance with section 4 or 5 of this revenue procedure, any additional payment with respect to such expenses is treated as paid under a nonaccountable plan, is included in the employee's gross income, is reported as wages or other compensation on the employee's Form W-2, and is subject to withholding and payment of employment taxes. Similarly, if an employee or self-employed individual computes the amount allowable as a deduction for meal and incidental expenses for travel away from home in accordance with section 4.03 or 4.04 of this revenue procedure, no other deduction is allowed to the employee or self-employed individual with respect to such expenses. For example, assume an employee receives a *per diem* allowance from a payor for lodging, meal, and incidental expenses or for meal and incidental expenses incurred while traveling away from home. During that trip, the employee pays for dinner for the employee and two business associates. The payor reimburses as a business entertainment meal expense the meal expense for the employee and the two business associates. Because the payor also pays a *per diem* allowance to cover the cost of the employee's meals, the amount paid by the payor for the employee's portion of the business entertainment meal expense is treated as paid under a nonaccountable plan, is reported as wages or other compensation on the employee's Form W-2, and is subject to withholding and payment of employment taxes.

.07 *Related parties*. Sections 4.01 and 5 of this revenue procedure will not apply in any case in which a payor and an employee are related within the meaning of § 267(b), but for this purpose the percentage of ownership interest referred to in § 267(b)(2) shall be 10 percent.

SECTION 7. APPLICATION

.01 If the amount of travel expenses is deemed substantiated under the rules provided in section 4 or 5 of this revenue procedure, and the employee actually substantiates to the payor the elements of time, place, and business purpose of the travel expenses in accordance with paragraphs (b)(2) (travel away from home) and (c) (other than subparagraph (2)(iii)(A) thereof) of § 1.274–5, the employee is deemed to satisfy the adequate accounting requirements of § 1.274–5(f) as well as the requirement to substantiate by adequate records or other sufficient evidence for purposes of § 1.274–5(c). See § 1.62–2(e)(1) for the rule that an arrangement must require business expenses to be substantiated to the payor within a reasonable period of time.

.02 An arrangement providing *per diem* allowances will be treated as satisfying the requirement of § 1.62–2(f)(2) with respect to returning amounts in excess of expenses if the employee is required to return within a reasonable period of time (as defined in § 1.62–2(g)) any portion of such an allowance that relates to days of travel not substantiated, even though the arrangement does not require the employee to return the portion of such an allowance that relates to days of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated. For example, assume a payor provides an employee an advance *per diem* allowance for meal and incidental expenses of $200, based on an anticipated 5 days of business travel at $40 per day to a locality for which the federal M&IE rate is $34, and the employee substantiates 3 full days of business travel. The requirement to return excess amounts will be treated as satisfied if the employee is required to return within a reasonable period of time (as defined in § 1.62–2(g)) the portion of the allowance that is attributable to the 2 unsubstantiated days of travel ($80), even though the employee is not required to return the portion of the allowance ($18) that exceeds the amount of the employee's expenses deemed substantiated under section 4.02 of this revenue procedure ($102) for the 3 substantiated days of travel. However, the $18 excess portion of the allowance is treated as paid under a nonaccountable plan as discussed in section 7.04 of this revenue procedure.

.03 An employee is not required to include in gross income the portion of a *per diem* allowance received from a payor that is less than or equal to the amount deemed substantiated under the rules provided in section 4 or 5 of this revenue procedure if the employee substantiates the business travel expenses covered by the *per diem* allowance in accordance with section 7.01 of this revenue procedure. *See* § 1.274–5(f)(2)(i). In addition, such portion of the allowance is treated as paid under an accountable plan, is not reported as wages or other compensation on the employee's Form W-2, and is exempt from the withholding and payment of employment taxes. *See* § 1.62–2(c)(2) and (c)(4).

.04 An employee is required to include in gross income only the portion of the *per diem* allowance received from a payor that exceeds the amount deemed substantiated under the rules provided in section 4 or 5 of this revenue procedure if the employee substantiates the business travel expenses covered by the *per diem* allowance in accordance with section 7.01 of this revenue procedure. *See* § 1.274–5(f)(2)(ii). In addition, the excess portion of the allowance is treated as paid under a nonaccountable plan, is reported as wages or other compensation on the employee's Form W-2, and is subject to withholding and payment of employment taxes. *See* § 1.62–2(c)(3)(ii), (c)(5), and (h)(2)(i)(B).

.05 If the amount of the expenses that is deemed substantiated under the rules provided in section 4.01, 4.02, or 5 of this revenue procedure is less than the amount of the employee's business expenses for travel away from home, the employee may claim an itemized deduction for the amount by which the business travel expenses exceed the amount that is deemed substantiated, provided the employee substantiates all the business travel expenses, includes on Form 2106, *Employee Business Expenses*, the deemed substantiated portion of the *per diem* allowance received from the payor, and includes in gross income the portion (if any) of the *per diem* allowance received from the payor that exceeds the amount deemed substantiated. *See* § 1.274–5(f)(2)(iii). However, for purposes of claiming this itemized deduction with respect to meal and incidental expenses, substantiation of the amount of the expenses is not required if the employee is claiming a deduction that is equal to or less than the amount computed under section 4.03 of this rev-

enue procedure minus the amount deemed substantiated under sections 4.02 and 7.01 of this revenue procedure. The itemized deduction is subject to the appropriate limitation (*see* section 2.02 of this revenue procedure) on meal and entertainment expenses provided in § 274(n) and the 2-percent floor on miscellaneous itemized deductions provided in § 67.

.06 An employee who does not receive a *per diem* allowance for meal and incidental expenses may deduct an amount computed pursuant to section 4.03 of this revenue procedure only as an itemized deduction. This itemized deduction is subject to the appropriate limitation (*see* section 2.02 of this revenue procedure) on meal and entertainment expenses provided in § 274(n) and the 2-percent floor on miscellaneous itemized deductions provided in § 67.

.07 A self-employed individual may deduct an amount computed pursuant to section 4.03 of this revenue procedure in determining adjusted gross income under § 62(a)(1). This deduction is subject to the appropriate limitation (see section 2.02 of this revenue procedure) on meal and entertainment expenses provided in § 274(n).

.08 If a payor's reimbursement or other expense allowance arrangement evidences a pattern of abuse of the rules of § 62(c) and the regulations thereunder, all payments under the arrangement will be treated as made under a nonaccountable plan. Thus, such payments are included in the employee's gross income, are reported as wages or other compensation on the employee's Form W-2, and are subject to withholding and payment of employment taxes. *See* § 1.62–2(c)(3), (c)(5), and (h)(2).

SECTION 8. WITHHOLDING AND PAYMENT OF EMPLOYMENT TAXES.

.01 The portion of a *per diem* allowance, if any, that relates to the days of business travel substantiated and that exceeds the amount deemed substantiated for those days under section 4.01, 4.02, or 5 of this revenue procedure is subject to withholding and payment of employment taxes. *See* § 1.62–2(h)(2)(i)(B).

.02 In the case of a *per diem* allowance paid as a reimbursement, the excess described in section 8.01 of this revenue procedure is subject to withholding and payment of employment taxes in the payroll period in which the payor reimburses the expenses for the days of travel substantiated. *See* § 1.62–2(h)(2)(i)(B)(*2*).

.03 In the case of a *per diem* allowance paid as an advance, the excess described in section 8.01 of this revenue procedure is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the days of travel with respect to which the advance was paid are substantiated. *See* § 1.62–2(h)(2)(i)(B)(*3*). If some or all of the days of travel with respect to which the advance was paid are not substantiated within a reasonable period of time and the employee does not return the portion of the allowance that relates to those days within a reasonable period of time, the portion of the allowance that relates to those days is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. *See* § 1.62–2(h)(2)(i)(A).

.04 In the case of a *per diem* allowance only for meal and incidental expenses for travel away from home paid to an employee in the transportation industry by a payor that uses the rule in section 4.04(3) of this revenue procedure, the excess of the *per diem* allowance paid for the period over the amount deemed substantiated for the period under section 4.02 of this revenue procedure (after applying section 4.04(3) of this revenue procedure), is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the excess is computed. *See* § 1.62–2(h)(2)(i)(B)(*4*).

.05 For example, assume that an employer pays an employee a *per diem* allowance to cover business expenses for meals and lodging for travel away from home at a rate of 120 percent of the federal *per diem* rate for the localities to which the employee travels. The employer does not require the employee to return the 20 percent by which the reimbursement for those expenses exceeds the federal *per diem* rate. The employee substantiates 6 days of travel away from home: 2 days in a locality in which the federal *per diem* rate is $100 and 4 days in a locality in which the federal *per diem* rate is $125. The employer reimburses the employee $840 for the 6 days of travel away from home (2 x (120% x $100) + 4 x (120% x $125)), and does not require the employee to return the excess payment of $140 (2 days x $20 ($120-$100) + 4 days x $25 ($150-$125)). For the payroll period in which the employer reimburses the expenses, the employer must withhold and pay employment taxes on $140. *See* section 8.02 of this revenue procedure.

SECTION 9. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2000–39 is hereby superseded (except to the extent specified in sections 4.04(5) and 5.06 of this revenue procedure) for *per diem* allowances that are paid both (1) to an employee on or after October 1, 2001, and (2) with respect to lodging, meal, and incidental expenses or with respect to meal and incidental expenses paid or incurred for travel while away from home on or after October 1, 2001. Rev. Proc. 2000–39 is also hereby superseded (except to the extent specified in section 4.04(5) of this revenue procedure) for purposes of computing the amount allowable as a deduction for meal and incidental expenses paid or incurred by an employee or self-employed individual for travel while away from home on or after October 1, 2001.

DRAFTING INFORMATION

The principal author of this revenue procedure is John L. Trevey, Jr., of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Trevey at (202) 622-4970 (not a toll-free call).

Part IV. Items of General Interest

Archer MSAs

Announcement 2001–99

PURPOSE

Sections 220(i) and (j) of the Internal Revenue Code provide that if the number of Medical Savings Account (MSA) returns filed for 2000 or a statutorily specified projection of the number of MSA returns that will be filed for 2001 exceeds 750,000, then October 1, 2001, is a "cut-off" date for the Archer MSA pilot project. The Internal Revenue Service (IRS) has determined that the applicable number of MSA returns filed for 2000 is 36,250 and that the applicable number of MSA returns projected to be filed for 2001 is 76,035 (after reduction in each case for statutorily specified exclusions, such as the exclusion for previously uninsured taxpayers). Consequently, October 1, 2001, is not a "cut-off" date and 2001 is not a "cut-off" year for the Archer MSA pilot project.

BACKGROUND

The Health Insurance Portability and Accountability Act of 1996 added section 220 to the Code to permit eligible individuals to establish Archer MSAs under a pilot project effective January 1, 1997. The pilot project, as amended by The Community Renewal Tax Relief Act of 2000, has a scheduled "cut-off" year of 2002, but may have an earlier "cut-off" year if the number of individuals who have established Archer MSAs exceeds certain numerical limitations. See sections 220(i) and (j).

If a year is a "cut-off" year, section 220(i)(1) generally provides that no individual will be eligible for a deduction or exclusion for Archer MSA contributions for any taxable year beginning after the "cut-off" year unless the individual (A) was an active MSA participant for any taxable year ending on or before the close of the "cut-off" year, or (B) first became an active MSA participant for a taxable year ending after the "cut-off" year by reason of coverage under a high deductible health plan of an MSA-participating employer.

Section 220(j)(2)(A) provides that the numerical limitation for 2001 is exceeded if the number of MSA returns filed on or before April 15, 2001, for taxable years ending with or within the 2000 calendar year, plus the Secretary's estimate of the number of MSA returns for those taxable years which will be filed after April 15, 2001, exceeds 750,000. For this purpose, section 220(j)(2)(A) provides that a tax return is an MSA return for a taxable year if any exclusion is claimed under section 106(b) or any deduction is claimed under section 220 for that taxable year. Section 220(j)(2)(B) provides, as an alternative test, that the numerical limitation for 2001 is also exceeded if the sum of 90 percent of the MSA returns for 2000 plus the product of 2.5 and the number of Archer MSAs for taxable years beginning in 2001 that are established during the portion of 2001 preceding July 1 (based on reports by Archer MSA trustees and custodians), exceeds 750,000.

Under section 220(j)(3), in determining whether any calendar year is a "cut-off" year, the Archer MSA of any previously uninsured individual is not taken into account. In addition, section 220(j)(4)(D) specifies that, to the extent practical, all Archer MSAs established by an individual are aggregated and two married individuals opening separate Archer MSAs are to be treated as having a single Archer MSA for purposes of determining the number of Archer MSAs.

A total of 54,979 tax returns reporting an excludable or deductible contribution to an Archer MSA for the 2000 taxable year were filed by April 15, 2001. Of this total, 22,968 taxpayers were reported as being previously uninsured. It has been estimated that an additional 7,253 tax returns reporting Archer MSA contributions for the 2000 taxable year have been or will be filed after April 15, 2001, including 3,014 taxpayers who were previously uninsured. Accordingly, it has been determined that there were 62,232 (54,979 plus 7,253) MSA returns for 2000. Of this total, 25,982 (22,968 plus 3,014) were for taxpayers reported as being previously uninsured. As a result, 36,250 (62,232 minus 25,982) MSA returns count toward the applicable statutory limitation for 2001 MSA returns of 750,000.

Based on the Forms 8851 filed on or before August 1, 2001, by Archer MSA trustees and custodians, it has been determined that 22,640 taxpayers who did not have Archer MSA contributions for 2000 established Archer MSAs for 2001 during the portion of 2001 preceding July 1. Of this total, 4,967 taxpayers were reported by trustees and custodians as previously uninsured, and therefore are not taken into account in determining whether 2001 is a "cut-off" year. In addition, 272 taxpayers were reported by trustees and custodians as excludable from the count because their spouse also established an Archer MSA, and 37 taxpayers had more than one account. Accordingly, the applicable number of Archer MSAs established from January 1, 2001, through June 30, 2001, is 17,364 (22,640 minus (4,967 plus 272 plus 37)). The alternative limitation for 2001 (90 percent of the applicable number of MSA returns for 2000 plus the product of 2.5 and the number of applicable Archer MSAs established from January 1, 2001, through June 30, 2001) is 76,035 (90 percent of 36,250 plus 2.5 times 17,364), which is less than the statutory limit of 750,000. Thus, 2001 is not a "cut-off" year for the Archer MSA pilot project by reason of either the 2000 MSA returns test of section 220(j)(2)(A) or the alternative test of section 220(j)(2)(B) of the Code.

Questions regarding this announcement may be directed to Felix Zech in the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) at (202) 622-6080 (not a toll-free number).

Foundations Status of Certain Organizations

Announcement 2001–102

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the

Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

A.C. Milan Futbol Club, Plano, TX
Aids Prevention Education and Advocacy Resource, Austin, TX
Alumni Association of Martin Luther King, Jr. High School, New York, NY
Anew a Renewal Center for Men and Women, Los Angeles, CA
Anointed Voices, Corpus Christi, TX
Austin Revitalization Authority, Austin, TX
Austin Sign Language Theatre Academy, Austin, TX
Baptist Ministries of South Texas, Inc., San Antonio, TX
Beta Education Foundation, Austin, TX
Bible Memory Challenge Ministries, San Antonio, TX
Bishop College Historical Society, Inc., Dallas, TX
Bridge the Gap, Inc., Fort Worth, TX
Buckingham Terrace, Inc., Atlanta, GA
Burleson County Reserve Law Enforcement Officers Association, Caldwell, TX
Cadillac Power Hitters Association, Kaufman, TX
Calvary Center, Inc., Laredo, TX
Centro De Inmigracion, Dallas, TX
CFIDS Walk-A-Thon Committee, Hicksville, NY
Cherokees of North Texas, Dallas, TX
Childrens Life Link, Inc., Waco, TX
Chinese Broadcasting Network, Inc., Richardson, TX
Colorado Museum of Contemporary Arts, Inc., Denver, CO
Colorado Volunteer Victim Advocate Program, Arvada, CO
Court Appointed Special Advocates of Upshur County, Inc., Gilmer, TX
Denton Public School Foundation, Inc., Denton, TX
Divine Health Care Systems, Inc., San Antonio, TX
East Texas Critical Incident Stress Management Team, Inc., Tyler, TX
Ecotema, Davis, CA
El Paso Charities Community Chest, El Paso, TX
El Paso Million Man March Initiative, Inc., El Paso, TX
El Paso Minority Supplier Development Council, Inc., El Paso, TX
Elite Credit Services, Inc., Dallas, TX
Emergency Assistance Alliance, Inc., Fort Worth, TX
Environmental Mobility, Inc., Corpus Christi, TX
Everyman Project, Austin, TX
Fillmore Civic Arts Council, Inc., Fillmore, UT
First Motion, Inc., Mokena, IL
Forth Worth Rugby Football Corporation, Ft. Worth, TX
Foundation for Aquatic Safety and Training, Dallas, TX
Foundation of Behavior Education Modification FBEM, Fort Worth, TX
Friends Who Care Foundation, Georgetown, TX
Gambian Association of Massachusetts, Somerville, MA
Gamma Education Foundation, Austin, TX
Gay and Lesbian Leaders Outreach Project Gallop, Dallas, TX
Good News Music Ministry, Bryan, TX
Grace Vocational Academy, Post, TX
Griggs Foundation, Inc., Dallas, TX
Hatzolah Jerusalem, Inc., Brooklyn, NY
Helping Hands for Life, Inc., Austin, TX
HFJ Community Services, Tacoma, WA
Hispanic Women for Progress, Big Spring, TX
Houston Musicians Benefit Foundation, Houston, TX
Human Potential Development Corp., Texarkana, TX
Imagination Young Peoples Center for Science Music and Movement in East Austin, Austin, TX
Institute for Learning and Communication Strategies, Inc., Austin, TX
Institute of New Physics, Inc., Los Angeles, CA
Internet Archive, San Francisco, CA
Jaguar Museum for British Car History a NJ Non-Profit Corp., Mahwah, NJ
Johnson County Business Development Corporation, Tecumseh, NE
Joshua Community Development, Inc., Joshua, TX
Kathleen Akin Scholarship Fund, Rockport, TX
Kids Voting California, San Jose, CA
Killeen Amateur Boxing Association, Kileen, TX
King Preservation Corporation, Chicago, IL
Knights of Malta Sovereign Order of Hospitallers of St. John of Jerusalem, Gallatin, TN
Kosher Kesher, Inc., Brooklyn, NY
KPCH, Inc., Winston-Salem, NC
La Habra High School Volleyball Boosters, La Habra, CA
La Junta Housing Development Corporation, La Junta, CO
Lake State Community Housing, Inc., St. Joseph, MI
Lake Villa Township Youth Football, Lake Villa, IL
Lazarus Alliance, Draper, UT
Learning Safari, Great Falls, VA
Lets Help Sunray, Inc., Dumas, TX
Life Match, Waco, TX
Liga Pan Americana Aguilas, Inc., San Antonio, TX
Lilies of the Field, Walnut, CA
Lillian J. Robinson Community Development Corporation, Bryan, TX
Living Word Outreach, Inc., Fairburn, GA
Love of Life Pregnancy Center, Inc., El Paso, TX
Love on 4 Paws, Ennis, TX
Love the Animals Charitable Trust, El Cerrito, CA
Maggies Playhouse, Dallas, TX
Manos Extendidas, Kent, WA
Mary Starke Harper Foundation, Inc., Tuscaloosa, AL
Massachusetts Vietnam Veterans Foundation, Inc., W. Springfield, MA
Mercy Wings International, Inc., Caddo Mills, TX
Mica League, Inc., Philadelphia, PA
Migala Foundation, Duncanville, TX
Mingeikan USA Tour, Fort Worth, TX
Minnesota Housing Initiative, Brooklyn Park, MN
Mohawk Area Development Corporation, Cincinnati, OH
Montgomery Times Foundation, Inc., Rockville, MD
Morgantown Lacrosse Club, Inc., Morgantown, WV
Morning Mist Ranch, Lubbock, TX
National Sexual Trauma Center, Inc., Pass Christian, MS
NCOA Student Civic Action Program, Inc., Mcghee Tyson, TN

Neighborhood in Action, Austin, TX
Neighborhoods Acting Together, San Antonio, TX
New Directions Network, Inc., Galveston, TX
New Life Ministries of the Rio Grande Valley, Inc., Harlingen, TX
New Millennium Educational Institute, Redwood City, CA
Nicaraguan - American Childrens Foundation, Inc., Miami, FL
North Bay Volunteer Medical Clinic, Inc., Ingleside, TX
North Texas Junior Golf & Education Foundation, Dallas, TX
Northeast Alamo Community Development Corporation, San Antonio, TX
Old East Dallas Neighborhood Association, Dallas, TX
Omega Education Foundation, Georgetown, TX
Organization for the Enrichment of Human Resource, Fairfield, CA
Pacific Actors Company, Sonoma, CA
Parker County Child Protective Services Board, Weatherford, TX
Pedastal Gardens Residents Association, Baltimore, MD
Peoples First Intermediate Care, Phoenix, IL
Pioneer Mountain Foundation, Inc., Ketchum, ID
Plano Lacrosse Association, Plano, TX
Player Service Foundation, Newport, RI
Playground For All, Inc., Azle, TX
PPBA Scholarship Foundation, Inc., Toledo, OH
Pro-Action, El Paso, TX
Professional Outreach Ministries, Inc., San Antonio, TX
Project Hope Tenants Assoc., Inc., Bronx, NY
Project Wheelbarrow, Inc., Canton, OH
Quitman Foundation of Perpetual Scholastic Funds, Quitman, TX
Raymine, Dallas, TX
Reaching & Identifying Special Kids-R.I.S.K., Picayune, MS
Real Solution Living Program, San Antonio, TX
Reconciled Ministries, Inc., San Antonio, TX
Recovery Haven Drug Recovery Center, Medaryville, IN
Rediscover Opportunity, Inc., Louisville, CO
Rhythm of Life Foundation, Los Angeles, CA
Rifled Arms Historical Association, Wallkill, NY
Robbie Cave Ministries, Austin, TX
Roger Brown Benefit Fund, Inc., Greensboro, NC
Romanian Childrens Connection, Inc., Alexandria, VA
Running Creek Animal Refuge, Inc., San Antonio, TX
Ryan Dietzman Memorial Scholarship Fund, Justin, TX
San Antonio Public Theatre, San Antonio, TX
Sandy Ford Junior Shooters, Inc., Streator, IL
Save Our Kids Boxing Association, Cleburne, TX
Save the World Ministries, Berkeley, CA
Scurry Youth Center, Snyder, TX
Seagraves-Loop Youth Association, Seagraves, TX
Senior Care Careers, Inc., Schaumburg, IL
Shades of the African-American Woman, Austin, TX
Share the Wealth Ministries, Mt. Airy, GA
Shenango Presbyterian Senior Housing, Inc., Oakmount, PA
Sierra Community Healthcare Foundation, Las Vegas, NV
Silver City Jazz Society, Silver City, NM
Sisters of Safety, Buena Vista, CO
Southeastern Connecticut Mental Health Authority, Inc., Norwich, CT
Southern Oregon Family Consortium, Medford, OR
Southside Virginia Wildlife Rehabilitation Center, Inc., South Hill, VA
Special Events for Aids, Inc., Sterling Hgts., MI
Springbrook Farm Corporation, Stow, MA
SSG Richard A. Fitts Veterans Transitional Center, Inc., Braintree, MA
St. Louis Bombers Rugby Football Club, Inc., St. Louis, MO
Step-Save the Earth and Its People, Inc., Jasper, GA
Street Light Productions, Inc., San Antonio, TX
Surgery Education Fund, Ann Arbor, MI
Synergy Local Development Corporation, Philadelphia, PA
Taskmates, Providence, RI
Taylors Charities Program, Dallas, TX
Telees Kids, Inc., Dallas, TX
Texas Hunter Education Instructors Association, Inc., Georgetown, TX
Texas Pride Baseball, Fort Worth, TX
Texas Society for Medical Staff Services, Austin, TX
Texas Socratic Foundation, Austin, TX
Theatre on Elm Street Toes, Dallas, TX
Thomas G. Daugherty Memorial Scholarship Fund, Sacramento, CA
Three Rivers Housing Development Corporation, Rome, GA
Transitional Services and Housing, Inc., Beavercreek, OH
Twla Gibson Transplant Fund, Victoria, TX
Tyler County, Woodville, TX
U.I.S.D. Campus Crime Stoppers, Inc., Laredo, TX
Umoja, Inc., Fort Worth, TX
Unified Resident Council of Chandler, Chandler, AZ
Unity Foundation, San Antonio, TX
Unlimited Access Educational Services, Ann Arbor, MI
UPCOD, Inc., Freer, TX
Vaad Ahavas Chinum, Inc., Baltimore, MD
Venture Outreach International, Fort Worth, TX
Virology Institute, San Antonio, TX
Visions of North Carolina, Greensboro, NC
Washington Times Foundation, Inc., Washington, DC
Weiss & Weiss Aquatics, Austin, TX
Wetstone Integrated Community Services, San Diego, CA
Where Hearts Can Mend, San Antonio, TX
Women & Youth Supporting Each Other, Los Angeles, CA
Yucca Corridor Coalition of Property Owners & Managers, Inc., Hollywood, CA
Zion Arts Institute, Inc., San Antonio, TX
Zions Treatment Center, Inc., Miami, FL

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

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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