Internal Revenue
bulletin

Bulletin No. 2002–51
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HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2002–82, page 978.
Viatical settlement providers; licensing. This ruling defines when a viatical settlement provider is required to be licensed by a state rather than meeting requirements imposed by the National Association of Insurance Commissioners.

EMPLOYEE PLANS

T.D. 9021, page 973.
Final regulations under section 72(p) of the Code relate to loans made from a qualified employer plan to plan participants or beneficiaries. The regulations address the suspension of loan repayments during a leave for military service under section 414(u)(4), the effect of a new loan following a deemed distribution of a prior loan, the effect of refinancings, and multiple loans.

Notice 2002–80, page 980.
Weighted average interest rate update. The weighted average interest rate for December 2002 and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code are set forth.

Announcement 2002–113, page 983.
This document contains corrections to proposed regulations (REG–124667–02, 2002–44 I.R.B. 791) that would consolidate the content requirements applicable to explanations of qualified joint and survivor annuities and preretirement survivor annuities payable under certain retirement plans.

ADMINISTRATIVE

Rev. Proc. 2002–74, page 980.
Insurance companies; loss discounting. This procedure clarifies that the composite method set forth in Notice 88–100 for discounting unpaid losses is permitted, but not required, for certain insurance companies subject to tax under section 831 of the Code. This document further provides an alternative method that is permitted for insurance companies not using the composite method, and sets forth a procedure for insurance companies to obtain automatic consent of the Commissioner to change to either method of accounting. Section V of Notice 88–100 obsolete to the extent it provides that the composite method is mandatory. Rev. Proc. 2002–9 modified and amplified.

Announcement 2002–114, page 983.
This document contains a correction to the advance notice of proposed regulations (published as Announcement 2002–91, 2002–40 I.R.B. 685) relating to the issuance of tax-exempt bonds for the government use portion of an output facility that is used for both government and private business use.

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.

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

Section 72.—Annuities; Certain Proceeds of Endowment and Life Insurance Contracts

26 CFR 1.72(p)–1: Loans treated as distributions.

T.D. 9021

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Loans From a Qualified Employer Plan to Plan Participants or Beneficiaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to loans made from a qualified employer plan to plan participants or beneficiaries. These final regulations affect administrators of, participants in, and beneficiaries of qualified employer plans that permit participants or beneficiaries to receive loans from plans, including loans from section 403(b) contracts and other contracts issued under qualified employer plans.

DATES: *Effective Date*: These regulations are effective December 3, 2002.

Applicability Date: These regulations apply to assignments, pledges, and loans made on or after January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Vernon S. Carter, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 72 of the Internal Revenue Code of 1986 (Code). Section 72(p) was added by section 236 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324), and amended by the Technical Corrections Act of 1982 (96 Stat. 2365), the Deficit Reduction Act of 1984 (98 Stat. 494), the Tax Reform Act of 1986 (100 Stat. 2085), and the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3342).

On July 31, 2000, final regulations were published in the **Federal Register** (T.D. 8894, 2000–2 C.B. 162 [65 FR 46588]) with respect to issues arising under section 72(p)(2). On the same date, a notice of proposed rulemaking (REG–116495–99, 2000–2 C.B. 179 [65 FR 46677]) was published in the **Federal Register** with respect to issues arising under section 72(p)(2) that were not addressed in the 2000 final regulations. The proposed regulations addressed the suspension of loan repayments during a leave of absence for military service in accordance with section 414(u)(4), the effect of a new loan following a deemed distribution of a prior loan, and the effect of refinancings and multiple loans. The preamble to the proposed regulations also requested comments on the application of the Electronic Signature in Global and National Commerce Act (114 Stat. 464) (ESIGN), which had been enacted shortly before publication of the proposed regulations. Following publication of the proposed regulations, comments were received and a public hearing was held on January 17, 2001. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 72(p)(1)(A) provides that a loan from a qualified employer plan (including a contract purchased under a qualified employer plan) to a participant or beneficiary is treated as received as a distribution from the plan for purposes of section 72 (a deemed distribution). Section 72(p)(1)(B) provides that an assignment or pledge of (or an agreement to assign or pledge) any portion of a participant's or beneficiary's interest in a qualified employer plan is treated as a loan from the plan.

Section 72(p)(2) provides that section 72(p)(1) does not apply to the extent certain conditions are satisfied. Specifically, under section 72(p)(2), a loan from a qualified employer plan to a participant or beneficiary is not treated as a distribution from the plan if the loan satisfies requirements relating to the term of the loan, the repayment schedule, and the amount loaned. For example, except in the case of certain home loans, the exception in section 72(p)(2) only applies to a loan that by its terms is to be repaid over not more than five years in substantially level installments. Such a loan is not a deemed distribution to the extent it does not exceed the lesser of (i) an amount equal to $50,000, reduced to the extent that the participant's or beneficiary's highest balance for plan loans outstanding during the preceding 12 months exceeds the current balance for plan loans, or (ii) 50 percent of the participant's or beneficiary's nonforfeitable benefit. Under section 72(p)(2)(D), these limitations apply by treating the loans from all plans of the employer's controlled group as one loan.

For purposes of section 72, a qualified employer plan includes a plan that qualifies under section 401 (relating to qualified trusts), 403(a) (relating to qualified annuities) or 403(b) (relating to tax sheltered annuities), as well as a plan (whether or not qualified) maintained by the United States, a State or a political subdivision thereof, or an agency or instrumentality thereof. A qualified employer plan also includes a plan which was (or was determined to be) a qualified employer plan or a government plan.

Summary of Comments Received, Changes Made, and Summary of the Final Regulations

These final regulations retain the general structure and much of the substance of the proposed regulations, including a variety of examples illustrating the provisions. Some changes have been made in connection with specific recommendations for modifications and clarifications. The comments received in response to the proposed regulations are generally summarized below.

A. *Loan repayment suspension during leave of absence for military service in accordance with section 414(u)(4)*

The proposed regulations stated that, under section 414(u)(4), a plan that permits suspension of loan repayment during a leave of absence for military service (as defined

in 38 U.S.C. chapter 43) will not cause the loan to be deemed distributed, even if the leave exceeds a year. The rule was conditioned on loan repayments resuming upon the completion of the military service, the amount remaining due on the loan being repaid in substantially level installments, and the loan being fully repaid by the end of the original term of the loan plus the period of the military service. One commentator was concerned that because the requirement that interest accruing during military service be paid within the extended term would result in larger loan payments following military service than payments preceding military service, the rule could work a hardship on some participants. The commentator suggested that the regulations be modified to allow extension of the loan term in these cases to the period necessary to repay the loan with payments in the same amount as before the military service leave. Another commentator requested that the same extension of loan repayments be permitted for other *bona fide* leaves of absence.

Section 414(u)(4) accommodates military service personnel by permitting postponement of loan repayments while performing military service, but does not alter the accrual of interest or any conditions in section 72(p)(2). Under the proposed regulations, upon resuming repayment, a lender may permit a participant to choose to increase the amount of the payments or to make payments at the previous rate with a balloon payment due at the end of the required time. The IRS and Treasury believe that the amendments suggested by these comments would not satisfy the conditions in section 72(p)(2) that are unaffected by section 414(u)(4). Therefore, the final regulations adopt the regulation as proposed. However, an example in the final regulations has been modified to reflect the application of a maximum 6 percent interest rate during the military leave in accordance with the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. A modification has also been made to clarify that loan repayments can be revised at the end of a military leave to extend the repayment schedule in the event the loan originally had a term of fewer than five years, as discussed below at the end of Section C.

B. *May another loan be extended after a deemed distribution*

The proposed regulations provided that if a loan is deemed distributed to a participant or beneficiary and has not been repaid, then, unless certain conditions are satisfied, any payment made to the participant or beneficiary thereafter will not be treated as a loan for purposes of section 72(p)(2). Specifically, the proposed regulations provided that to avoid this result, the plan must enter into an agreement under which either repayments are made by payroll withholding or adequate security for the additional loan (in addition to the participant's accrued benefit) is obtained. Some commentators stated that because individuals often hold section 403(b) annuity contracts with more than one issuer, it may be difficult for an issuer to determine whether an individual has defaulted on a plan loan with another issuer. A concern was expressed that if upon a deemed distribution a Form 1099–R, *Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.*, is not issued reflecting taxable income, a subsequent loan to a defaulting participant could subject the loan issuer to penalties.

However, in order to satisfy the limitations on the maximum amount that may be loaned from plans of the employer imposed by section 72(p)(2)(A), the issuer of any loan under section 72(p)(2) must inquire about other loans made from the plan or any other plan of the employer before extending a loan. As part of this process, the issuer can condition a new loan on a participant's disclosure of such prior loans and, for this purpose, can rely on an employee's certification concerning the status of prior loans, assuming the issuer has no reason to doubt the employee's certification. Accordingly, the final regulations adopt the provision as proposed.

C. *May a loan be refinanced*

The proposed regulations provided that, while a loan may be refinanced, the refinancing arrangement must satisfy the requirements of section 72(p)(2)(B) and (C) that loans be repaid in substantially level installments, not less often than quarterly and over a period not in excess of five years (longer for certain home loans). Under the proposed regulations, a refinancing is treated as a continuation of the prior loan, plus a new loan to the extent of any increase in the loan balance. Thus, while a refinancing loan can be repaid over a five-year period from the date of the refinancing to the extent the refinancing loan exceeds the prior loan amount, the prior outstanding loan must continue to be repaid in substantially level installments over a period not longer than the original term remaining on the prior loan in order for the refinancing not to result in a deemed distribution. A refinancing can also satisfy the repayment requirements of section 72(p)(2)(B) and (C) if the refinanced loan is repaid within the original term remaining on the prior loan. If any portion of the refinancing loan has a later repayment date than the original term remaining on the prior loan, then both the prior loan and the refinancing loan are treated as outstanding at the time of the refinancing for purposes of the limitations on the maximum amount that may be loaned from plans of the employer under section 72(p)(2) (which is generally the lesser of a $50,000 amount described above or 50 percent of the employee's nonforfeitable benefit). These standards were illustrated in examples.

Commentators requested that the regulations be modified so that the rules for refinancings accommodate a prior loan with a term of less than five years that is refinanced to a date that is five years from the date of the prior loan.

The final regulations generally adopt the provision on loan refinancings as proposed. However, the refinancing rules have been modified to conform with the recommendation made by commentators on the extension of a prior loan with an original term of less than five years to a term of five years from the date of the prior loan. A similar modification has also been made for repayments made following a military leave.

D. *Are multiple loans permitted*

Section 72(p)(2) does not prohibit a participant from borrowing from a plan more than once a year. However, in order to address the risk that additional loans could be taken out in order to avoid repayment of prior loans, the proposed regulations provided that a deemed distribution occurs if a participant obtains more than two loans a year.

Several commentators stated that obtaining loans simply to repay previous loans is an abuse that should not be permitted,

and commentators and others also provided information indicating that the vast majority of defined contribution plans already include limitations under which a participant is not permitted to have more than two loans outstanding at any time. However, commentators generally requested the flexibility of being allowed to make more than two loans per year to a participant and provided various examples of situations (such as a parent with several children in college) in which a participant might have a legitimate need for multiple borrowings during a year. They also noted that there is no direct statutory foundation for limiting the number of loans under section 72(p) and that the special 12-month rule with respect to the calculation of the $50,000 limitation under section 72(p)(2)(A)(i) inherently limits the number of loans that can be made for larger borrowings. In recognition of these comments, the final regulations do not include any limitation on the number of loans that can be made under section 72(p)(2). Treasury and the IRS recognize that the absence of any limitation on the number of loans that may be made to a participant will allow certain practices that could not otherwise occur without generating taxable income through a deemed distribution under section 72(p). For example, as pointed out by certain commentators, the use of a participant's account balance under a qualified employer plan to secure a credit card is a practice that would not be permissible if the regulations were to limit the number of loans that could be made to a participant from a plan. Thus, Treasury and the IRS recognize that, because the final regulations do not include any limitation on the number of loans that can be made, there will be no section 72(p) barrier to credit card loans that otherwise meet the requirements of that section.

E. *Application of ESIGN*

The 2000 final regulations require that the terms of a plan loan be set forth in an enforceable agreement and provide that the agreement may be set forth in an electronic medium that satisfies standards that are based on the standards for an electronic consent to a distribution contained in § 1.411(a)–11(f)(2). As noted in the preamble to the proposed regulations under § 1.417(a)(3)–1 published in the **Federal Register** on October 7, 2002 (REG–124667–02, 2002–44 I.R.B. 791 [67 FR 62417]) (relating to disclosure of relative values of optional forms of benefit), the IRS and the Treasury Department are considering the extent to which notices under the various Code requirements relating to qualified retirement plans can be provided electronically, taking into account the effect of ESIGN. As further noted in that preamble, the IRS and the Treasury Department anticipate issuing proposed regulations regarding these issues, and invite comments on these issues. The requirements applicable to electronic plan loan agreements may be considered in connection with those upcoming proposed regulations as well.[1]

F. *May section 457(b) governmental plans have plan loans*

Commentators requested that the regulations be modified to clarify that eligible governmental plans under section 457(b) are permitted to offer loans to employees in a manner consistent with section 72(p). Proposed regulations under section 457 (REG–105885–99, 2002–23 I.R.B. 1103 [67 FR 30826]) that were published in the **Federal Register** on May 8, 2002, clarify the conditions under which loans can be made to participants in such plans (at proposed § 1.457–6(f)) and that section 72(p) applies to any such loan (at proposed § 1.457–7(b)(3)).

G. *Regulation effective date*

The proposed regulations would have been effective on the first January 1 that is at least 6 months after they are published as final regulations. These final regulations apply to assignments, pledges, and loans made on or after January 1, 2004, but do not apply to loans made under an insurance contract that is in effect on December 31, 2003, if the insurance carrier is required to offer loans to contractholders that are not secured (other than by the participant's or beneficiary's benefit under the contract).

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Vernon S. Carter, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1 — INCOME TAXES

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

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

Par. 2. Section 1.72(p)–1 is amended as follows:

1. A–9, Q&A–19, are revised and A–20 is added.

2. A–22 is amended by adding paragraph (d).

[1] The staff of the Board of Governors of the Federal Reserve System (Board) has advised the IRS that a plan loan that satisfies section 72(p)(2) and these regulations would constitute an extension of credit under 12 CFR 226.2(a)(14) of Regulation Z, implementing the Truth in Lending Act (TILA). Thus, unless the plan or the loan is otherwise excepted from the application of Regulation Z (for example, the plan could be exempt because the plan has not made enough loans to be considered a creditor under Regulation Z, or a particular loan could be exempt because it exceeds TILA's limit of $25,000 for loans not secured by real property or a dwelling), a plan loan that satisfies the requirements of Q&A–3(b) of § 1.72(p)–1 would be subject to the disclosure and other requirements of Regulation Z. The staff of the Board has further advised the IRS and Treasury that, pending the Board's adoption of final rules regarding electronic disclosures, creditors may provide electronic disclosures required by Regulation Z if the consumer's consent is obtained as required under ESIGN. See 66 FR 17322 (March 30, 2001, relating to Reg. M, Consumer Leasing Act); 66 FR 17329 (March 30, 2001, relating to Reg. Z, TILA); 66 FR 17779 (April 4, 2001, relating to Reg. B, Equal Credit Opportunity Act); 66 FR 17786 (April 4, 2001, relating to Reg. E, Electronic Fund Transfer Act); and 66 FR 17795 (April 4, 2001, relating to Reg. DD, Truth in Savings Act).

The revisions and additions read as follows:

§ 1.72(p)–1 Loans treated as distributions.

* * * * *

A–9: (a) *Leave of absence.* The level amortization requirement of section 72(p)(2)(C) does not apply for a period, not longer than one year (or such longer period as may apply under section 414(u) and paragraph (b) of this Q&A–9), that a participant is on a *bona fide* leave of absence, either without pay from the employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. However, the loan (including interest that accrues during the leave of absence) must be repaid by the latest permissible term of the loan and the amount of the installments due after the leave ends must not be less than the amount required under the terms of the original loan.

(b) *Military service.* In accordance with section 414(u)(4), if a plan suspends the obligation to repay a loan made to an employee from the plan for any part of a period during which the employee is performing service in the uniformed services (as defined in 38 U.S.C. chapter 43), whether or not qualified military service, such suspension shall not be taken into account for purposes of section 72(p) or this section. Thus, if a plan suspends loan repayments for any part of a period during which the employee is performing military service described in the preceding sentence, such suspension shall not cause the loan to be deemed distributed even if the suspension exceeds one year and even if the term of the loan is extended. However, the loan will not satisfy the repayment term requirement of section 72(p)(2)(B) and the level amortization requirement of section 72(p)(2)(C) unless loan repayments resume upon the completion of such period of military service and the loan is repaid thereafter by amortization in substantially level installments over a period that ends not later than the latest permissible term of the loan.

(c) *Latest permissible term of a loan.* For purposes of this Q&A–9, the latest permissible term of a loan is the latest date permitted under section 72(p)(2)(B) (*i.e.*, five years from the date of the loan, assuming that the replacement loan does not qualify for the exception at section 72(p)(2)(B)(ii) for principal residence plan loans) plus any additional period of suspension permitted under paragraph (b) of this Q&A–9.

(d) *Examples.* The following examples illustrate the rules of this Q&A–9 and are based upon the assumptions described in the introductory text of this section:

Example 1. (i) On July 1, 2003, a participant with a nonforfeitable account balance of $80,000 borrows $40,000 to be repaid in level monthly installments of $825 each over 5 years. The loan is not a principal residence plan loan. The participant makes 9 monthly payments and commences an unpaid leave of absence that lasts for 12 months. The participant was not performing military service during this period. Thereafter, the participant resumes active employment and resumes making repayments on the loan until the loan is repaid. The amount of each monthly installment is increased to $1,130 in order to repay the loan by June 30, 2008.

(ii) Because the loan satisfies the requirements of section 72(p)(2), the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would be satisfied if the participant continued the monthly installments of $825 after resuming active employment and on June 30, 2008, repaid the full balance remaining due.

Example 2. (i) The facts are the same as in *Example 1*, except the participant was on leave of absence performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for two years and the rate of interest charged during this period of military service is reduced to 6 percent compounded annually under 50 App. Section 526 (relating to the Soldiers' and Sailors' Civil Relief Act Amendments of 1942). After the military service ends on April 2, 2006, the participant resumes active employment on April 19, 2006, continues the monthly installments of $825 thereafter, and on June 30, 2010, repays the full balance remaining due ($6,487).

(ii) Because the loan satisfies the requirements of section 72(p)(2) and paragraph (b) of this Q&A–9, the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would also be satisfied if the amount of each monthly installment after April 19, 2006, is increased to $930 in order to repay the loan by June 30, 2010 (without any balance remaining due then).

* * * * *

Q–19: If there is a deemed distribution under section 72(p), is the interest that accrues thereafter on the amount of the deemed distribution an indirect loan for income tax purposes and what effect does the deemed distribution have on subsequent loans?

A–19: (a) *General rule.* Except as provided in paragraph (b) of this Q&A–19, a deemed distribution of a loan is treated as a distribution for purposes of section 72. Therefore, a loan that is deemed to be distributed under section 72(p) ceases to be an outstanding loan for purposes of section 72, and the interest that accrues thereafter under the plan on the amount deemed distributed is disregarded for purposes of applying section 72 to the participant or the beneficiary. Even though interest continues to accrue on the outstanding loan (and is taken into account for purposes of determining the tax treatment of any subsequent loan in accordance with paragraph (b) of this Q&A–19), this additional interest is not treated as an additional loan (and thus, does not result in an additional deemed distribution) for purposes of section 72(p). However, a loan that is deemed distributed under section 72(p) is not considered distributed for all purposes of the Internal Revenue Code. See Q&A–11 through Q&A–16 of this section.

(b) *Effect on subsequent loans*—(1) *Application of section 72(p)(2)(A).* A loan that is deemed distributed under section 72(p) (including interest accruing thereafter) and that has not been repaid (such as by a plan loan offset) is considered outstanding for purposes of applying section 72(p)(2)(A) to determine the maximum amount of any subsequent loan to the participant or beneficiary.

(2) *Additional security for subsequent loans.* If a loan is deemed distributed to a participant or beneficiary under section 72(p) and has not been repaid (such as by a plan loan offset), then no payment made thereafter to the participant or beneficiary is treated as a loan for purposes of section 72(p)(2) unless the loan otherwise satisfies section 72(p)(2) and this section and either of the following conditions is satisfied:

(i) There is an arrangement among the plan, the participant or beneficiary, and the employer, enforceable under applicable law, under which repayments will be made by payroll withholding. For this purpose, an arrangement will not fail to be enforceable merely because a party has the right to revoke the arrangement prospectively.

(ii) The plan receives adequate security from the participant or beneficiary that is in addition to the participant's or beneficiary's accrued benefit under the plan.

(3) *Condition no longer satisfied.* If, following a deemed distribution that has not been repaid, a payment is made to a participant or beneficiary that satisfies the conditions in paragraph (b)(2) of this Q&A–19 for treatment as a plan loan and, subsequently, before repayment of the second loan, the conditions in paragraph (b)(2) of

this Q&A–19 are no longer satisfied with respect to the second loan (for example, if the loan recipient revokes consent to payroll withholding), the amount then outstanding on the second loan is treated as a deemed distribution under section 72(p).

Q–20: May a participant refinance an outstanding loan or have more than one loan outstanding from a plan?

A–20: (a) *Refinancings and multiple loans*—(1) *General rule.* A participant who has an outstanding loan that satisfies section 72(p)(2) and this section may refinance that loan or borrow additional amounts if, under the facts and circumstances, the loans collectively satisfy the amount limitations of section 72(p)(2)(A) and the prior loan and the additional loan each satisfy the requirements of section 72(p)(2)(B) and (C) and this section. For this purpose, a refinancing includes any situation in which one loan replaces another loan.

(2) *Loans that repay a prior loan and have a later repayment date.* For purposes of section 72(p)(2) and this section (including the amount limitations of section 72(p)(2)(A)), if a loan that satisfies section 72(p)(2) is replaced by a loan (a replacement loan) and the term of the replacement loan ends after the latest permissible term of the loan it replaces (the replaced loan), then the replacement loan and the replaced loan are both treated as outstanding on the date of the transaction. For purposes of the preceding sentence, the latest permissible term of the replaced loan is the latest date permitted under section 72(p)(2)(C) (*i.e.*, five years from the original date of the replaced loan, assuming that the replaced loan does not qualify for the exception at section 72(p)(2)(B)(ii) for principal residence plan loans and that no additional period of suspension applied to the replaced loan under Q&A–9 (b) of this section). Thus, for example, if the term of the replacement loan ends after the latest permissible term of the replaced loan and the sum of the amount of the replacement loan plus the outstanding balance of all other loans on the date of the transaction, including the replaced loan, fails to satisfy the amount limitations of section 72(p)(2)(A), then the replacement loan results in a deemed distribution. This paragraph (a)(2) does not apply to a replacement loan if the terms of the replacement loan would satisfy section 72(p)(2) and this section determined as if the replacement loan consisted of two separate loans, the replaced loan (amortized in substantially level payments over a period ending not later than the last day of the latest permissible term of the replaced loan) and, to the extent the amount of the replacement loan exceeds the amount of the replaced loan, a new loan that is also amortized in substantially level payments over a period ending not later than the last day of the latest permissible term of the replaced loan.

(b) *Examples.* The following examples illustrate the rules of this Q&A–20 and are based on the assumptions described in the introductory text of this section:

Example 1. (i) A participant with a vested account balance that exceeds $100,000 borrows $40,000 from a plan on January 1, 2005, to be repaid in 20 quarterly installments of $2,491 each. Thus, the term of the loan ends on December 31, 2009. On January 1, 2006, when the outstanding balance on the loan is $33,322, the loan is refinanced and is replaced by a new $40,000 loan from the plan to be repaid in 20 quarterly installments. Under the terms of the refinanced loan, the loan is to be repaid in level quarterly installments (of $2,491 each) over the next 20 quarters. Thus, the term of the new loan ends on December 31, 2010.

(ii) Under section 72(p)(2)(A), the amount of the new loan, when added to the outstanding balance of all other loans from the plan, must not exceed $50,000 reduced by the excess of the highest outstanding balance of loans from the plan during the 1-year period ending on December 31, 2005, over the outstanding balance of loans from the plan on January 1, 2006, with such outstanding balance to be determined immediately prior to the new $40,000 loan. Because the term of the new loan ends later than the term of the loan it replaces, under paragraph (a)(2) of this Q&A–20, both the new loan and the loan it replaces must be taken into account for purposes of applying section 72(p)(2), including the amount limitations in section 72(p)(2)(A). The amount of the new loan is $40,000, the outstanding balance on January 1, 2006, of the loan it replaces is $33,322, and the highest outstanding balance of loans from the plan during 2005 was $40,000. Accordingly, under section 72(p)(2)(A), the sum of the new loan and the outstanding balance on January 1, 2006, of the loan it replaces must not exceed $50,000 reduced by $6,678 (the excess of the $40,000 maximum outstanding loan balance during 2005 over the $33,322 outstanding balance on January 1, 2006, determined immediately prior to the new loan) and, thus, must not exceed $43,322. The sum of the new loan ($40,000) and the outstanding balance on January 1, 2006, of the loan it replaces ($33,322) is $73,322. Since $73,322 exceeds the $43,322 limit under section 72(p)(2)(A) by $30,000, there is a deemed distribution of $30,000 on January 1, 2006.

(iii) However, no deemed distribution would occur if, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan were equal to $2,907, which is the sum of the $2,491 originally scheduled quarterly installment payment amount under the first loan, plus $416 (which is the amount required to repay, in level quarterly installments over 5 years beginning on January 1, 2006, the excess of the refinanced loan over the January 1, 2006, balance of the first loan ($40,000 minus $33,322 equals $6,678)), and the amount of the 4 remaining installments was equal to $416. The refinancing would not be subject to paragraph (a)(2) of this Q&A-20 because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of 2 loans, one of which is in the amount of the first loan ($33,322) and is amortized in substantially level payments over a period ending December 31, 2009 (the last day of the term of the first loan), and the other of which is in the additional amount ($6,678) borrowed under the new loan. Similarly, the transaction also would not result in a deemed distribution (and would not be subject to paragraph (a)(2) of this Q&A–20) if the terms of the refinanced loan provided for repayments to be made in level quarterly installments (of $2,990 each) over the next 16 quarters.

Example 2. (i) The facts are the same as in *Example 1*(i), except that the applicable interest rate used by the plan when the loan is refinanced is significantly lower due to a reduction in market rates of interest and, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan is equal to $2,848 and the amount of the next 4 installments on the refinanced loan is equal to $406. The $2,848 amount is the sum of $2,442 to repay the first loan by December 31, 2009 (the term of the first loan), plus $406 (which is the amount to repay, in level quarterly installments over 5 years beginning on January 1, 2006, the $6,678 excess of the refinanced loan over the January 1, 2006, balance of the first loan).

(ii) The transaction does not result in a deemed distribution (and is not subject to paragraph (a)(2) of this Q&A–20) because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of 2 loans, one of which is in the amount of the first loan ($33,322) and is amortized in substantially level payments over a period ending December 31, 2009 (the last day of the term of the first loan), and the other of which is in the additional amount ($6,678) borrowed under the new loan. The transaction would also not result in a deemed distribution (and not be subject to paragraph (a)(2) of this Q&A–20) if the terms of the new loan provided for repayments to be made in level quarterly installments (of $2,931 each) over the next 16 quarters.

* * * * *

A–22: * * *

(d) *Effective date for Q&A–19(b)(2) and Q&A–20.* Q&A–19(b)(2) and Q&A–20 of this section apply to assignments, pledges, and loans made on or after January 1, 2004.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved November 7, 2002.

Pamela F. Olson,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on December 2, 2002, 8:45 a.m., and published in the issue of the Federal Register for December 3, 2002, 67 F.R. 71821)

Section 101.—Certain Death Benefits

Viatical settlement providers; licensing. This ruling defines when a viatical settlement provider is required to be licensed by a state rather than meeting requirements imposed by the National Association of Insurance Commissioners.

Rev. Rul. 2002–82

ISSUE

Under what circumstances will a viatical settlement provider be treated as licensed by a State for purposes of § 101(g)(2)(B) of the Internal Revenue Code?

FACTS

Buyer is a person regularly engaged in the trade or business of purchasing, or taking assignments of, life insurance contracts on the lives of insureds who are either terminally or chronically ill (a viatical settlement provider). Buyer purchases, or takes assignments of, life insurance contracts from persons residing in States that have enacted legislation requiring the licensing of viatical settlement providers and in States that have no statute requiring licensing.

Not all States that require licensing for viatical settlement providers have fully implemented their licensing procedures. In State A, the appropriate regulatory authority has issued a letter to Buyer granting temporary authority to engage in the business of purchasing, or taking assignments of, life insurance contracts on the lives of residents of State A while Buyer's application for a license is pending. If State A decides not to issue a license to Buyer, State A will revoke its temporary authority to Buyer.

In State B, the licensing statute is effective, but a procedure is not yet in place for licensing providers. However, the appropriate regulatory authorities of State B have issued a public notice that authorizes all viatical settlement providers to engage in business in State B until further guidance is issued.

In State C, the licensing statute is effective but a procedure is not yet in place for licensing providers, nor has the appropriate regulatory authority granted permission, even temporarily, for providers to engage in business in State C until licensing procedures are in place.

LAW AND ANALYSIS

Section 101(a)(1) excludes from gross income amounts received under a life insurance contract by reason of the death of the insured. If the insured is either terminally or chronically ill, amounts received under the life insurance contract (whether or not the recipient is also the insured) may be treated under § 101(g) as amounts received by reason of the death of the insured and excluded from gross income. For this purpose, terminally ill individuals are defined under § 101(g)(4)(A), and chronically ill individuals are defined under § 101(g)(4)(B). The exclusion is unlimited in amount for contracts insuring terminally ill individuals, but under § 101(g)(3) the exclusion is limited for insureds who are chronically ill.

If the person making the payments to the owner of the life insurance contract is the issuing insurance company, the availability of the exclusion depends solely upon whether the insured meets the definition of either a terminally or chronically ill person. If a life insurance contract insuring a terminally or chronically ill individual is sold or assigned, however, the buyer/assignee must qualify as a viatical settlement provider under § 101(g)(2)(B) in order for the owner of the life insurance contract to exclude all or a portion of the amounts received from the sale or assignment.

Section 101(g)(2)(B)(I) defines a viatical settlement provider as any person regularly engaged in the trade or business of purchasing, or taking assignments of, life insurance contracts on the lives of insureds who are terminally or chronically ill, and such person satisfies one of two alternative tests. If the insured resides in a State that requires licensing of viatical settlement providers with respect to the insured, the buyer/assignee must be so licensed. Section 101(g)(2)(B)(i)(I). In some States that require licensing, the licensing program may not be fully operational immediately upon the effective date of the implementing statute.

If the insured resides in a State not requiring the licensing of viatical settlement providers with respect to the insured, the buyer/assignee must meet the requirements set forth by the National Association of Insurance Commissioners (NAIC) in the Viatical Settlements Model Act and the Model Regulations or other NAIC requirements for evaluating the reasonableness of amounts paid by such persons in connection with purchases or assignments with respect to such insureds. Sections 101(g)(2)(B)(i)(II) and 101(g)(2)(B)(ii) and (iii). The Model Act, Model Regulations, and other NAIC standards applicable to viatical settlement providers are comprehensive and complex, and are subject to periodic examination by the NAIC for possible modification or expansion.

For purposes of § 101(g)(2)(B)(i)(I), if the regulatory authority in a State that requires licensing establishes an interim program granting temporary authority to particular viatical settlement providers or blanket authority for all viatical settlement providers to conduct business pending implementation of its licensing program, authorized providers will be treated as licensed in that State.

Conversely, if a State enacts a licensing requirement and the appropriate regulatory authorities of the State do not permit viatical settlement providers to engage in business in that State (either under temporary authority to particular viatical settlement providers or blanket authority to all viatical settlement providers) until licenses are actually granted, providers that nevertheless engage in business in that State will not be treated as licensed for purposes of § 101(g)(2)(B)(i)(I). In such a State, a viatical settlement provider may not rely on the NAIC Model Law or Model Regulations to satisfy the requirements set forth in § 101(g)(2)(B)(i)(II). Accordingly, no exclusion is available for proceeds from the sale or assignment of life insurance contracts insuring the lives of terminally or chronically ill insureds residing in that State until that State actually grants licenses.

HOLDING

Buyer is treated as licensed for purposes of § 101(g)(2)(B)(i)(I) in State A (where temporary authority has been granted to Buyer to engage in business while State A reviews Buyer's pending licensing application) and in State B (where blanket authority to engage in business has been granted to all viatical settlement providers by State B, pending further guidance).

Buyer is not treated as licensed for purposes of § 101(g)(2)(B)(i)(I) in State C. Further, Buyer may not qualify as a viatical settlement provider in State C under § 101(g)(2)(B)(i)(II). Therefore, sellers or assignors residing in State C may not exclude under § 101(a) any portion of the amount received from Buyer. Buyer's failure to qualify as a licensed provider in State C does not affect whether Buyer qualifies as licensed in any other state.

EFFECTIVE DATE

This revenue ruling is effective for all amounts received on or after January 1, 1997, the effective date of § 101(g). However, amounts received pursuant to sales or assignments entered into before July 1, 2003, by residents of any State that requires licensing of viatical settlement providers but has neither issued temporary authority to particular viatical settlement providers nor blanket authority to all viatical settlement providers that are not yet individually licensed will be treated as received from a viatical settlement provider if, at the time of the sale or assignment, the viatical settlement provider satisfied the requirements of § 101(g)(2)(B)(i)(II).

DRAFTING INFORMATION

The principal author of this revenue ruling is Ann H. Logan of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact her at (202) 622–3970 (not a toll-free call).

Section 832.—Insurance Company Taxable Income

26 CFR 1.832–4: Gross income.

A revenue procedure clarifies that for certain insurance companies the composite method set forth in Notice 88–100, section V, 1988–2 C.B. 439, for computing discounted unpaid losses is permitted but not required. This revenue procedure further provides an alternative method that is permitted for insurance companies not using the composite method, and sets forth a procedure for insurance companies to obtain automatic consent of the Commissioner to change to either method of accounting. See Rev. Proc. 2002–74, page 980.

Section 846.—Discounted Unpaid Losses Defined

26 CFR 1.846–1(b): Applicable discount factors.

A revenue procedure clarifies that for certain insurance companies the composite method set forth in Notice 88–100, section V, 1988–2 C.B. 439, for computing discounted unpaid losses is permitted but not required. This revenue procedure further provides an alternative method that is permitted for insurance companies not using the composite method, and sets forth a procedure for insurance companies to obtain automatic consent of the Commissioner to change to either method of accounting. See Rev. Proc. 2002–74, page 980.

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 2002–80

Sections 412(b)(5)(B) and 412(l)(7)(C)(i) of the Internal Revenue Code provide that the interest rates used to calculate current liability for purposes of determining the full funding limitation under § 412(c)(7) and the required contribution under § 412(1) must be within a permissible range around the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year.

Notice 88–73, 1988–2 C.B. 383, provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Code.

Section 417(e)(3)(A)(ii)(II) of the Code defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)–1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury Securities for November 2002 is 4.96 percent. Pursuant to Notice 2002–26, 2002–15 I.R.B. 743, the Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in February 2031.

Section 405 of the Job Creation and Worker Assistance Act of 2002 amended § 412(1)(7)(C) of the Code to provide that for plan years beginning in 2002 and 2003 the permissible range is extended to 120 percent.

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

Month	Year	Weighted Average	90% to 110% Permissible Range	90% to 120% Permissible Range
December	2002	5.56	5.00 to 6.12	5.00 to 6.67

Drafting Information

The principal author of this notice is Todd Newman of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday. Mr. Newman may be reached at 1–202–283–9888 (not a toll-free number).

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26 CFR 601.204: Changes in accounting periods and methods of accounting.
(Also Part I, §§ 832, 846; 1.832–4, 1.846–1(b).)

Rev. Proc. 2002–74

SECTION 1. PURPOSE

This revenue procedure clarifies that for certain insurance companies subject to tax under § 831 of the Internal Revenue Code the composite method set forth in Notice 88–100, section V, 1988–2 C.B. 439, for computing discounted unpaid losses is permitted but not required. This revenue procedure further provides alternative methods for computing discounted unpaid losses that are permitted for insurance companies not using the composite method, and sets forth a procedure for insurance companies to obtain automatic consent of the Commissioner to change to one of the methods described in this revenue procedure.

SECTION 2. BACKGROUND

.01 Section 831 imposes a tax for each taxable year on the taxable income of every insurance company other than a life insurance company. Section 832(a) provides that, in the case of an insurance company subject to the tax imposed by § 831, the term "taxable income" means gross income, as defined in § 832(b)(1), less the deductions allowed by § 832(c).

.02 Section 832(b)(1) provides that the gross income of an insurance company subject to the tax imposed by § 831 includes the combined gross amount earned during the taxable year from investment income and from underwriting income, computed on the basis of the National Association of Insurance Commissioners (NAIC) annual statement. For this purpose, § 832(b)(3) defines underwriting income as premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred.

.03 Section 832(b)(5) defines losses incurred during the taxable year on insurance contracts as follows: (1) from losses paid during the taxable year, deduct salvage and reinsurance recovered; (2) to the results so obtained, add all unpaid losses on life insurance contracts plus all discounted unpaid losses (as defined in § 846) outstanding at the end of the taxable year and deduct all unpaid losses on life insurance contracts plus all discounted unpaid losses outstanding at the end of the preceding taxable year; (3) to the results so obtained, add estimated salvage and reinsurance recoverable as of the end of the preceding taxable year and deduct estimated salvage and reinsurance recoverable as of the end of the

taxable year. The amount of estimated salvage recoverable is determined on a discounted basis in accordance with procedures established by the Secretary. *See* § 1.832–(4)(c) of the Income Tax Regulations.

.04 Section 846(a)(2) provides that the amount of discounted unpaid losses as of the end of any taxable year attributable to any taxable year is equal to the present value of the losses (as of such time) determined by using (1) the amount of the undiscounted unpaid losses as of such time; (2) the applicable interest rate; and (3) the applicable loss payment pattern.

.05 Section 846(d) instructs the Secretary to determine a loss payment pattern for insurance companies to use for each line of business by reference to the historical payment pattern applicable to such line of business. Section 846(d)(2) and (3) provide rules for the Secretary and insurance companies to use in determining the loss payment patterns. Each year, the Secretary publishes tables in the Internal Revenue Bulletin setting forth the loss payment patterns and discount factors for that accident year. *See*, *e.g.*, Rev. Proc. 2001–60, 2001–2 C.B. 643. Alternatively, § 846(e) permits insurance companies to elect to use their own historical payment pattern for purposes of computing discounted unpaid losses.

.06 After Congress enacted § 846, the Treasury Department published Notice 88–100, 1988–2 C.B. 439, to provide guidance with respect to several issues expected to be addressed in forthcoming regulations under § 846. Section V of Notice 88–100 stated that regulations under § 846 would provide that taxpayers cannot use information not appearing on their NAIC annual statements to allocate aggregate unpaid losses among several accident years. Instead, the notice set forth a method for computing a composite discount factor by (i) determining the fraction of losses unpaid at year-end for each such accident year includible in the payment pattern for a given line of business, (ii) determining the discounted fraction of losses unpaid for each of these accident years, and (iii) dividing the sum of the fractions determined under (ii) by the sum of the fractions determined under (i). The notice provided an example to illustrate the operation of this formula.

.07 Sections 1.846–1, 1.846–2, and 1.846–3 of the regulations were promulgated by T.D. 8433 (1992–2 C.B. 146) in 1992. These regulations provided guidance on several issues addressed in Notice 88–100. Accordingly, portions of Notice 88–100 were obsoleted in 1992 by the publication of T.D. 8433. Section V of Notice 88–100 was not, however, obsoleted.

SECTION 3. APPLICATION

.01 Insurance companies are permitted to use the method of section V of Notice 88–100 (the composite method) to compute discounted unpaid losses with respect to accident years not separately reported on the NAIC annual statement. Beginning in 2002, the Secretary will publish composite discount factors for use by insurance companies who use the composite method and have not elected under § 846(e) to use their historical payment patterns. These factors will be published annually along with the Secretary's tables containing the § 846 loss payment patterns and discount factors and the § 832 salvage discount factors. Insurance companies that have elected under § 846(e) to use their historical payment patterns should apply the composite method based on their historical payment patterns.

.02 Insurance companies that do not use a composite method described in section 3.01 should instead use the discount factors for the appropriate year in the Secretary's table for the appropriate line of business. If insurance companies have unpaid losses relating to an accident year that is older than the last accident year for which a discount factor is presented in the Secretary's table, those unpaid losses should be discounted using the factor for the last accident year in the Secretary's table. Insurance companies that have elected under § 846(e) to use their historical payment patterns should compute the appropriate discount factors in accordance with § 846(e) based on their historical payment patterns.

.03 An insurance company using a method provided in section 3.01 or a method provided in section 3.02 to compute discounted unpaid losses, must use the same method to compute discounted estimated salvage recoverable.

SECTION 4. SCOPE

This revenue procedure applies to insurance companies that are required to discount unpaid losses under § 846.

SECTION 5. AUDIT PROTECTION FOR TAXPAYERS CURRENTLY USING A METHOD PROVIDED IN SECTION 3

An insurance company within the scope of this revenue procedure that is using a method provided in section 3 of this revenue procedure on December 4, 2002, may continue to use that method without filing a Form 3115, *Application for Change in Accounting*. The use of a method provided in section 3 will not be raised as an issue in any taxable year. Moreover, if an insurance company's use of a method provided in section 3 is already an issue under consideration (within the meaning of section 3.09 of Rev. Proc. 2002–9, 2002–3 I.R.B. 327 (as modified and amplified by Rev. Proc. 2002–19, 2002–13 I.R.B. 696, modified and clarified by Announcement 2002–17, 2002–8 I.R.B. 561, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–35 I.R.B. 432) in a taxable year that ends before December 4, 2002, the issue will not be further pursued by the Service.

SECTION 6. CHANGE IN METHOD OF ACCOUNTING

.01 *In general.* A change in an insurance company's method of discounting unpaid losses and estimated salvage recoverable to a method described in section 3 is a change in method of accounting to which §§ 446 and 481 apply. An insurance company that wants to change its method of accounting to a method consistent with this revenue procedure must follow the automatic change in method of accounting provisions in Rev. Proc. 2002–9, 2002–3 I.R.B. 327 (as modified and amplified by Rev. Proc. 2002–19, 2002–13 I.R.B. 696, modified and clarified by Announcement 2002–17, 2002–8 I.R.B. 561, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–35 I.R.B. 432) with the following modifications:

(1) The scope limitations in section 4.02 of Rev. Proc. 2002–9 do not apply to an insurance company that wants to make the change for its first taxable year ending on or after December 4, 2002, provided the insurance company's method of discounting unpaid losses addressed in this revenue procedure is not an issue under consideration for taxable years under examination, within the meaning of section 3.09 of

Rev. Proc. 2002–9, at the time the Form 3115 is filed with the national office.

(2) To assist the Service in processing changes in method of accounting under this section of the revenue procedure, and to ensure proper handling, section 6.02(4)(a) of Rev. Proc. 2002–9 is modified to require that a Form 3115 filed under this revenue procedure include the statement: "Automatic Change Filed Under Rev. Proc. 2002–74." This statement should be legibly printed or typed on the appropriate line on any Form 3115 filed under this revenue procedure.

.02 *Pending applications with national office.* If an insurance company filed an application or ruling request with the national office to make a change in method of accounting to a method provided in section 3, and the application or ruling request is pending with the national office on December 4, 2002, the insurance company may change its method of accounting in accordance with this procedure. However, the national office will process the application or ruling request in accordance with the authority under which it was filed (including the year of change) unless, prior to the later of March 4, 2003, or the issuance of the letter ruling granting or denying the requested change, the insurance company notifies the national office that it wants to change its method of accounting under this revenue procedure. If the insurance company timely notifies the national office that it wants to change its method of accounting in accordance with this revenue procedure, any user fee that was submitted with the application or ruling request will be returned.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 4, 2002.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–9 is modified and amplified to include this automatic change in section 5 of the APPENDIX.

Section V of Notice 88–100 is obsolete to the extent it provides the composite method for computing discounted unpaid losses is mandatory.

DRAFTING INFORMATION

The principal author of this revenue procedure is Katherine A. Hossofsky of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Ms. Hossofsky at (202) 622–3477 (not a toll-free call).

Part IV. Items of General Interest

Disclosure of Relative Values of Optional Forms of Benefit; Correction

Announcement 2002–113

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–124667–02, 2002–44 I.R.B. 791) and notice of public hearing that was published in the **Federal Register** on Monday, October 7, 2002 (67 FR 62417) that would consolidate the content requirements applicable to explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans.

FOR FURTHER INFORMATION CONTACT: Sara P. Shepherd at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–124667–02, 2002–44 I.R.B. 791) and notice of public hearing that is the subject of these corrections is under section 417 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–124667–02), that was the subject of FR Doc. 00–25338, is corrected as follows:

1. On page 62421, column 2, in the preamble under the caption "Comments and Public Hearing", second full paragraph, line 2, the language "for January 14, 2002, at 10 a.m. in room" is corrected to read "for January 14, 2003, at 10 a.m. in room".

2. On page 62421, column 2, in the preamble under the caption "Comments and Public Hearing", third full paragraph, line 8, the language "January 2, 2002. A period of 10 minutes" is corrected to read "January 2, 2003. A period of 10 minutes".

Cynthia E. Grigsby,
Chief, Regulations Unit,
Associate Chief Counsel
(Income Tax and Accounting).

(Filed by the Office of the Federal Register on November 26, 2002, 8:45 a.m., and published in the issue of the Federal Register for November 27, 2002, 67 F.R. 70891)

Guidance Regarding Mixed Use Output Facilities; Correction

Announcement 2002–114

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to an advance notice of proposed rulemaking.

SUMMARY: This document contains a correction to an advance notice of proposed rulemaking (published as Announcement 2002–91, 2002–40 I.R.B. 685) that was published in the **Federal Register** on Monday, September 23, 2002 (65 FR 59767) relating to the issuance of tax-exempt bonds for the government use portion of an output facility that is used for both a government use and a private business use.

FOR FURTHER INFORMATION CONTACT: Rose M. Weber at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The advance notice of proposed rulemaking that is the subject of this correction is under sections 103 and 141 of the Internal Revenue Code.

Need for Correction

As published, the advance notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–142599–02), that was the subject of FR Doc. 02–24138, is corrected as follows:

On page 59767, column 2, in the preamble under the paragraph heading "Background", fifth paragraph, line 4, the language "690 (1986), 1986–3 (Vol. 4) C.B. 686 (the" is corrected to read "690 (1986), 1986–3 (Vol. 4) C.B. 690 (the".

Cynthia E. Grigsby,
Chief, Regulations Unit,
Associate Chief Counsel
(Income Tax and Accounting).

(Filed by the Office of the Federal Register on November 26, 2002, 8:45 a.m., and published in the issue of the Federal Register for November 27, 2002, 67 F.R. 70891)

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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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2002–1 through 2002–25 is in Internal Revenue Bulletin 2002–26, dated July 1, 2002.

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