Internal Revenue
bulletin

Bulletin No. 2009-19
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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. 2009–12, page 928.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for May 2009.

Notice 2009–40, page 931.

Renewable electricity production, refined coal production, and Indian coal production; calendar year 2009 inflation adjustment factors and reference prices. This notice announces the calendar year 2009 inflation adjustment factors and reference prices for the renewable electricity production credit, refined coal production credit, and Indian coal production credit under section 45 of the Code.

Notice 2009–41, page 933.

Residential energy efficient property credit. This notice provides procedures that manufacturers may follow to certify property as qualified residential energy efficient property under section 25D of the Code. The notice also provides guidance regarding the conditions under which taxpayers seeking to claim the section 25D credit may rely on a manufacturer's certification.

Rev. Proc. 2009–26, page 935.

This procedure provides guidance to taxpayers on electing the 3-, 4-, or 5-year carryback of net operating losses of small businesses under section 1211 of the American Recovery and Reinvestment Tax Act of 2009. Rev. Proc. 2009–19 modified and superseded.

EXEMPT ORGANIZATIONS

Announcement 2009–37, page 940.

The IRS has revoked its determination that Community Housing and Development Corporation of Las Vegas, NV; and Jordan Ministries, Inc., of Dover, FL, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

Announcement 2009–38, page 940.

A list is provided of organizations now classified as private foundations.

ADMINISTRATIVE

Rev. Proc. 2009–27, page 938.

Qualified mortgage bonds; mortgage credit certificates; national median gross income. Guidance is provided concerning the use of the national and area median gross income figures by issuers of qualified mortgage bonds and mortgage credit certificates in determining the housing cost/income ratio described in section 143(f) of the Code. Rev. Proc. 2008–19 obsoleted in part.

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 compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2009. See Rev. Rul. 2009-12, page 928.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of May 2009. See Rev. Rul. 2009-12, page 928.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of May 2009. See Rev. Rul. 2009-12, page 928.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2009. See Rev. Rul. 2009-12, page 928.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2009. See Rev. Rul. 2009-12, page 928.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2009. See Rev. Rul. 2009-12, page 928.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of May 2009. See Rev. Rul. 2009-12, page 928.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2009. See Rev. Rul. 2009-12, page 928.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of May 2009. See Rev. Rul. 2009-12, page 928.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2009. See Rev. Rul. 2009-12, page 928.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2009. See Rev. Rul. 2009-12, page 928.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for May 2009.

Rev. Rul. 2009–12

This revenue ruling provides various prescribed rates for federal income tax purposes for May 2009 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2009–12 TABLE 1

Applicable Federal Rates (AFR) for May 2009

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term				
AFR	.76%	.76%	.76%	.76%
110% AFR	.84%	.84%	.84%	.84%
120% AFR	.91%	.91%	.91%	.91%
130% AFR	.99%	.99%	.99%	.99%
Mid-term				
AFR	2.05%	2.04%	2.03%	2.03%
110% AFR	2.25%	2.24%	2.23%	2.23%
120% AFR	2.47%	2.45%	2.44%	2.44%
130% AFR	2.67%	2.65%	2.64%	2.64%
150% AFR	3.08%	3.06%	3.05%	3.04%
175% AFR	3.60%	3.57%	3.55%	3.54%
Long-term				
AFR	3.58%	3.55%	3.53%	3.52%
110% AFR	3.95%	3.91%	3.89%	3.88%
120% AFR	4.31%	4.26%	4.24%	4.22%
130% AFR	4.67%	4.62%	4.59%	4.58%

REV. RUL. 2009–12 TABLE 2

Adjusted AFR for May 2009

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	.80%	.80%	.80%	.80%
Mid-term adjusted AFR	2.39%	2.38%	2.37%	2.37%
Long-term adjusted AFR	4.58%	4.53%	4.50%	4.49%

REV. RUL. 2009–12 TABLE 3

Rates Under Section 382 for May 2009

Adjusted federal long-term rate for the current month	4.58%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.61%

REV. RUL. 2009–12 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for May 2009

Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.65%
Appropriate percentage for the 30% present value low-income housing credit	3.28%

REV. RUL. 2009–12 TABLE 5	
Rate Under Section 7520 for May 2009	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	2.4%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2009. See Rev. Rul. 2009-12, page 928.

Section 6411.—Tentative Carryback and Refund Adjustments

Guidance is provided for taxpayers to elect the 3, 4, or 5 year carryback of net operating losses of small businesses under section 1211 of the American Recovery and Reinvestment Tax Act of 2009 by filing Form 1045, *Application for Tentative Refund*, or Form 1139, *Corporation Application for Tentative Refund*. See Rev. Proc. 2009-26, page 935.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2009. See Rev. Rul. 2009-12, page 928.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2009. See Rev. Rul. 2009-12, page 928.

Part III. Administrative, Procedural, and Miscellaneous

Credit for Renewable Electricity Production, Refined Coal Production, and Indian Coal Production, and Publication of Inflation Adjustment Factors and Reference Prices for Calendar Year 2009

Notice 2009–40

This notice publishes the inflation adjustment factors and reference prices for calendar year 2009 for the renewable electricity production credit, the refined coal production credit, and the Indian coal production credit under § 45 of the Internal Revenue Code. The 2009 inflation adjustment factors and reference prices are used in determining the availability of the credits. The 2009 inflation adjustment factors and reference prices apply to calendar year 2009 sales of kilowatt-hours of electricity produced in the United States or a possession thereof from qualified energy resources and to calendar year 2009 sales of refined coal and Indian coal produced in the United States or a possession thereof.

BACKGROUND

Section 45(a) provides that the renewable electricity production credit for any tax year is an amount equal to the product of 1.5 cents multiplied by the kilowatt hours of specified electricity produced by the taxpayer and sold to an unrelated person during the tax year. This electricity must be produced from qualified energy resources and at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service.

Section 45(b)(1) provides that the amount of the credit determined under § 45(a) is reduced by an amount which bears the same ratio to the amount of the credit as (A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to (B) 3 cents. Under § 45(b)(2), the 1.5 cent amount in § 45(a), the 8 cent amount in § 45(b)(1), the $4.375 amount in § 45(e)(8)(A), and in § 45(e)(8)(B)(i), the $2.00 amount in § 45(e)(8)(D)(ii)(I), the reference price of fuel used as feedstock (within the meaning of § 45(c)(7)(A)) in 2002 are each adjusted by multiplying the amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, the amount is rounded to the nearest multiple of 0.1 cent.

Section 45(c)(1) defines qualified energy resources as wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy.

Section 45(d)(1) defines a qualified facility using wind to produce electricity as any facility owned by the taxpayer that is originally placed in service after December 31, 1993, and before January 1, 2013. See § 45(e)(7) for rules relating to the inapplicability of the credit to electricity sold to utilities under certain contracts.

Section 45(d)(2)(A) defines a qualified facility using closed-loop biomass to produce electricity as any facility (i) owned by the taxpayer that is originally placed in service after December 31, 1992, and before January 1, 2014, or (ii) owned by the taxpayer which before January 1, 2014, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052. Section 45(d)(2)(C) provides that in the case of a qualified facility described in § 45(d)(2)(A)(ii), (i) the 10-year period referred to in § 45(a) is treated as beginning no earlier than the date of enactment of § 45(d)(2)(B)(i); and (ii) if the owner of the facility is not the producer of the electricity, the person eligible for the credit allowable under § 45(a) is the lessee or the operator of the facility.

Section 45(d)(3)(A) defines a qualified facility using open-loop biomass to produce electricity as any facility owned by the taxpayer which (i) in the case of a facility using agricultural livestock waste nutrients, (I) is originally placed in service after the date of enactment of § 45(d)(3)(A)(i)(I) and before January 1, 2014, and (II) the nameplate capacity rating of which is not less than 150 kilowatts; and (ii) in the case of any other facility, is originally placed in service before January 1, 2014. In the case of any facility described in § 45(d)(3)(A), if the owner of the facility is not the producer of the electricity, § 45(d)(3)(C) provides that the person eligible for the credit allowable under § 45(a) is the lessee or the operator of the facility.

Section 45(d)(4) defines a qualified facility using geothermal or solar energy to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of § 45(d)(4) and before January 1, 2014 (January 1, 2006, in the case of a facility using solar energy). A qualified facility using geothermal or solar energy does not include any property described in § 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under § 48.

Section 45(d)(5) defines a qualified facility using small irrigation power to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of § 45(d)(5) and before January 1, 2014.

Section 45(d)(6) defines a qualified facility using gas derived from the biodegradation of municipal solid waste to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of § 45(d)(6) and before January 1, 2014.

Section 45(d)(7) defines a qualified facility (other than a facility described in paragraph (6)) that burns municipal solid waste to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of § 45(d)(7) and before January 1, 2014. A qualified facility burning municipal solid waste includes a new unit placed in service in connection with a facility placed in service on or before the date of enactment of § 45(d)(7), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

Section 45(d)(8) provides in the case of a facility that produces refined coal,

the term "refined coal production facility" means (i) with respect to a facility producing steel industry fuel, any facility (or any modification to a facility) which is placed in service before January 1, 2010, and (ii) with respect to any other facility producing refined coal, any facility placed in service after the date of the enactment of the American Jobs Creation Act of 2004 and before January 1, 2010.

Section 45(d)(9) defines a qualified facility producing qualified hydroelectric production described in § 45(c)(8) as (A) any facility producing incremental hydropower production, but only to the extent of its incremental hydropower production attributable to efficiency improvements or additions to capacity described in § 45(c)(8)(B) placed in service after the date of enactment of § 45(d)(9) and before January 1, 2014, and (B) any other facility placed in service after the date of enactment of § 45(d)(9) and before January 1, 2014. Section 45(d)(9)(C) provides that in the case of a qualified facility described in § 45(d)(9)(A), the 10-year period referred to in § 45(a) is treated as beginning on the date the efficiency improvements or additions to capacity are placed in service.

Section 45(d)(10) provides in the case of a facility that produces Indian coal, the term "Indian coal production facility" means a facility which is placed in service before January 1, 2009.

Section 45(d)(11) provides in the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term "qualified facility" means any facility owned by the taxpayer (i) which has a nameplate capacity rating of at least 150 kilowatts, and (ii) which is originally placed in service on or after the date of the enactment of § 45(d)(11) and before January 1, 2014.

Section 45(e)(8)(A) provides that the refined coal production credit is an amount equal to $4.375 per ton of qualified refined coal (i) produced by the taxpayer at a refined coal production facility during the 10-year period beginning on the date the facility was originally placed in service, and (ii) sold by the taxpayer (I) to an unrelated person and (II) during the 10-year period and the tax year. Section 45(e)(8)(B) provides that the amount of credit determined under § 45(e)(8)(A) is reduced by an amount which bears the same ratio to the amount of the increase as (i) the amount by which the reference price of fuel used as feedstock (within the meaning of § 45(c)(7)(A)) for the calendar year in which the sale occurs exceeds an amount equal to 1.7 multiplied by the reference price for such fuel in 2002, bears to (ii) $8.75. Section 45(e)(8)(D)(ii)(I) provides that in the case of a taxpayer who produces steel industry fuel, subparagraph § 45(e)(8)(A) shall be applied by substituting "$2.00 per barrel-of-oil equivalent" for $4.375 per ton." Section 45(e)(8)(D)(ii)(II) provides that in lieu of the 10-year period referred to in § 45(e)(8)(A)(i) and (ii)(II), the credit period shall be the period beginning on the later of the date such facility was originally placed in service, the date the modifications described in § 45(e)(8)(D)(iii) were placed in service, or October 1, 2008, and ending on the later of December 31, 2009, or the date which is 1 year after the date such facility or the modifications described in § 45(e)(8)(D)(iii) were placed in service. Section 45(e)(8)(D)(ii)(III) provides that § 45(e)(8)(B) (dealing with the phaseout of the credit) will not apply.

Section 45(e)(10)(A) provides in the case of a producer of Indian coal, the credit determined under § 45 for any taxable year shall be increased by an amount equal to the applicable dollar amount per ton of Indian coal (i) produced by the taxpayer at an Indian coal production facility during the 7-year period beginning on January 1, 2006, and (ii) sold by the taxpayer (I) to an unrelated person, and (II) during such 7-year period and such taxable year.

Section 45(e)(10)(B)(i) defines "applicable dollar amount" for any taxable year as (I) $1.50 in the case of calendar years 2006 through 2009, and (II) $2.00 in the case of calendar years beginning after 2009.

Section 45(e)(2)(A) requires the Secretary to determine and publish in the Federal Register each calendar year the inflation adjustment factor and the reference price for the calendar year. The inflation adjustment factors and the reference prices for the 2009 calendar year were published in the Federal Register on April 9, 2009 (70 Fed. Reg. 16262).

Section 45(e)(2)(B) defines the inflation adjustment factor for a calendar year as the fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 1992. The term "GDP implicit price deflator" means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

Section 45(e)(2)(C) provides that the reference price is the Secretary's determination of the annual average contract price per kilowatt hour of electricity generated from the same qualified energy resource and sold in the previous year in the United States. Only contracts entered into after December 31, 1989, are taken into account.

Under § 45(e)(8)(C), the determination of the reference price for fuel used as feedstock within the meaning of § 45(c)(7)(A) is made according to rules similar to the rules under § 45(e)(2)(C).

Under § 45(e)(10)(B)(ii), in the case of any calendar year after 2006, each of the dollar amounts under § 45(e)(10)(B)(i) shall be equal to the product of such dollar amount and the inflation adjustment factor determined under § 45(e)(2)(B) for the calendar year, except that § 45(e)(2)(B) shall be applied by substituting 2005 for 1992.

INFLATION ADJUSTMENT FACTORS AND REFERENCE PRICES

The inflation adjustment factor for calendar year 2009 for qualified energy resources and refined coal is 1.4171. The inflation adjustment factor for Indian coal is 1.0830. The reference price for calendar year 2009 for facilities producing electricity from wind (based upon information provided by the Department of Energy) is 4.32 cents per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of § 45(c)(7)(A), relating to refined coal production (based upon information provided by the Department of Energy) are $31.90 per ton for calendar year 2002 and $39.72 per ton for calendar year 2009. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic energy have not been determined for calendar year 2009.

PHASE-OUT CALCULATION

Because the 2009 reference price for electricity produced from wind does not exceed 8 cents multiplied by the inflation adjustment factor, the phaseout of the credit provided in § 45(b)(1) does not apply to such electricity sold during calendar year 2009. Because the 2009 reference price of fuel used as feedstock for refined coal does not exceed the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor and 1.7, the phaseout of credit provided in § 45(e)(8)(B) does not apply to refined coal sold during calendar year 2009. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic energy, the phaseout of credit provided in § 45(b)(1) does not apply to such electricity sold during calendar year 2009.

CREDIT AMOUNT BY QUALIFIED ENERGY RESOURCE AND FACILITY, REFINED COAL, AND INDIAN COAL

As required by § 45(b)(2), the 1.5 cent amount in § 45(a)(1), the 8 cent amount in § 45(b)(1), the $4.375 amount in § 45(e)(8)(A) and the $2.00 amount in § 45(e)(8)(D) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, qualified hydropower facilities, marine and hydrokinetic renewable energy, § 45(b)(4)(A) requires the amount in effect under § 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by § 45(b)(2), the credit for renewable electricity production for calendar year 2009 under § 45(a) is 2.1 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 1.1 cent per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, qualified hydropower facilities, marine and hydrokinetic energy facilities. Under the calculation required by § 45(b)(2), the credit for refined coal production for calendar year 2009 under § 45(e)(8)(A) is $6.20 per ton on the sale of qualified refined coal. The credit for steel industry fuel is $2.00 per barrel-of-oil equivalent of steel industry fuel sold. The credit for Indian coal production for calendar year 2009 under § 45(e)(10)(B) is $1.625 per ton on the sale of Indian coal.

DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Philip Tiegerman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Tiegerman at (202) 622–3110 (not a toll-free call).

Credit for Residential Energy Efficient Property

Notice 2009–41

SECTION 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the credit for residential energy efficient property under § 25D of the Internal Revenue Code for taxable years beginning after December 31, 2008. Specifically, this notice provides procedures that manufacturers may follow to certify that property satisfies certain conditions of § 25D, as well as guidance regarding the conditions under which taxpayers seeking to claim the § 25D credit may rely on a manufacturer's certification. The Internal Revenue Service (Service) and the Treasury Department expect that the regulations will incorporate the rules set forth in this notice.

SECTION 2. BACKGROUND

.01 Section 25D provides a tax credit to individuals for residential energy efficient property. Section 1122 of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, amended section 25D for taxable years beginning after December 31, 2008. The amount of a taxpayer's section 25D credit for a taxable year beginning after December 31, 2008, is equal to the sum of the following:

(1) 30 percent of the qualified solar electric property expenditures made by the taxpayer during the taxable year;

(2) 30 percent of the qualified solar water heating property expenditures made by the taxpayer during the taxable year;

(3) The lesser of—

(i) 30 percent of the qualified fuel cell property expenditures made by the taxpayer during the taxable year; or

(ii) $500 for each half kilowatt of capacity of the qualified fuel cell property to which the expenditures relate;

(4) 30 percent of the qualified small wind energy property expenditures made by the taxpayer during the taxable year; and

(5) 30 percent of the qualified geothermal heat pump property expenditures made by the taxpayer during the taxable year.

.02 Section 25D(g) provides that the credit applies to residential energy efficient property placed in service before January 1, 2017.

SECTION 3. RESIDENTIAL ENERGY EFFICIENT PROPERTY

.01 *Meaning of Terms.*

(1) *Qualified Expenditures.* The expenditures for which the credit for residential energy efficient property is allowed (qualified expenditures) are defined as follows:

(a) Qualified solar electric property expenditures are expenditures for property which uses solar energy to generate electricity for use in a qualifying dwelling unit.

(b) Qualified solar water heating property expenditures are expenditures for property which heats water for use in a qualifying dwelling unit if at least half of the energy used by the property for such purpose is derived from the sun, and which is certified for performance by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed.

(c) Qualified fuel cell property expenditures are expenditures for a fuel cell power plant which has a nameplate capacity of at least 0.5 kilowatt of electricity using an

electrochemical process, has an electricity-only generation efficiency greater than 30 percent, and is installed on or in connection with a qualifying dwelling unit.

(d) Qualified small wind energy property expenditures are expenditures for property which uses a wind turbine to generate electricity for use in connection with a qualifying dwelling unit.

(e) Qualified geothermal heat pump property expenditures are expenditures for equipment which uses the ground or ground water as a thermal energy source to heat the dwelling unit or as a thermal energy sink to cool the dwelling unit, meets the requirements of the Energy Star program which are in effect at the time that the expenditure for such equipment is actually made (even if under § 25D(e)(8) the expenditure is deemed made at a later time for purposes of determining the taxable year for which a taxpayer may claim the credit), and is installed on or in connection with a qualifying dwelling unit.

(2) *Qualifying Dwelling Unit*.

(a) Except as provided in section 3.01(2)(b) of this notice, a qualifying dwelling unit is a dwelling unit that is located in the United States and is used as a residence by the taxpayer.

(b) For purposes of section 3.01(1)(c) of this notice (relating to qualified fuel cell property expenditures), a qualifying dwelling unit is a dwelling unit that is located in the United States and is used as a principal residence (within the meaning of section 121) by the taxpayer.

.02 *Manufacturer's Certification*

(1) *In General*. The manufacturer of property may certify to a taxpayer that the property meets certain requirements that must be satisfied to claim the credit under § 25D by providing the taxpayer with a certification statement that satisfies the requirements of section 3.02(3), (4) and (5) of this notice. The manufacturer may provide the certification statement by including a written copy of the statement with the packaging of the property, in printable form on the manufacturer's website, or in any other manner that will permit the taxpayer to retain the certification statement for tax recordkeeping purposes.

(2) *Taxpayer Reliance.* Except as provided in section 3.02(7) of this notice, a taxpayer may rely on a manufacturer's certification in determining whether property is eligible for the credit under § 25D. A taxpayer is not required to attach the certification statement to the return on which the credit is claimed. However, § 1.6001–1(a) of the Income Tax Regulations requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any credit claimed by the taxpayer. Accordingly, a taxpayer claiming a credit for residential energy efficient property should retain the certification statement as part of the taxpayer's records for purposes of § 1.6001–1(a).

(3) *Content of Manufacturer's Certification; Required Information*. A manufacturer's certification statement must contain the following:

(a) The name and address of the manufacturer.

(b) Identification of the property as a solar electric property, solar water heating property, fuel cell property, small wind energy property, or geothermal heat pump property.

(c) The make, model number, and any other appropriate identifiers of the property.

(4) *Content of Manufacturer's Certification; Optional Information*. A manufacturer's certification statement may contain any of the following statements that are applicable:

(a) A statement that the property is made by the manufacturer.

(b) In the case of a solar water heating property, a statement describing the circumstances in which at least half the energy used by the property to heat water for use in a dwelling unit is derived from the sun.

(c) In the case of a solar water heating property, a statement that the property is certified for performance by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed.

(d) In the case of a fuel cell property, a statement that the property is a fuel cell power plant that has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process.

(e) In the case of a fuel cell property, a statement that the property is a fuel cell power plant that has an electricity-only generation efficiency greater than 30 percent.

(f) In the case of a fuel cell property, a statement specifying the capacity of the property in half kilowatts.

(g) In the case of a small wind energy property, a statement specifying the capacity of the wind turbine in half kilowatts.

(h) In the case of a geothermal heat pump property, a statement that the property meets the requirements of the Energy Star program that are in effect at the time that the expenditure for such equipment is actually made.

(5) *Content of Manufacturer's Certification; Required Declaration.* A manufacturer's certification statement must contain a declaration, signed by a person currently authorized to bind the manufacturer in these matters, in the following form:

"Under penalties of perjury, I declare that I have examined this certification statement, and to the best of my knowledge and belief, the facts presented are true, correct, and complete."

(6) *Manufacturer's Records*. A manufacturer that certifies to a taxpayer that a property meets a requirement that must be satisfied to claim the credit under § 25D must retain in its records documentation establishing that the property meets the requirement. The manufacturer must, upon request, make such documentation available for inspection by the Service.

(7) *Effect of Erroneous Certification or Failure to Satisfy Documentation Requirements.* The Service may, upon examination (and after any appropriate consultation with the Department of Energy or the Environmental Protection Agency), determine that a manufacturer's certification that property meets a requirement that must be satisfied to claim the credit under § 25D is erroneous. In that event, or if the property's manufacturer fails to satisfy the requirements relating to documentation in section 3.02(6) of this notice, the manufacturer's right to provide a certification on which future purchasers of the property can rely will be withdrawn, and taxpayers purchasing the property after the date on which the Service publishes an announcement of the withdrawal may not rely on the manufacturer's certification. Taxpayers may continue to rely on the certification for properties purchased on or before the date on which the announcement of the withdrawal is published (including in cases in which the property is not installed or the credit is not claimed before

the announcement of the withdrawal is published). Manufacturers are reminded that an erroneous certification may result in the imposition of penalties—

(a) Under § 7206 for fraud and making false statements; and

(b) Under § 6701 for aiding and abetting an understatement of tax liability (in the amount of $1,000 per return on which a credit is claimed in reliance on the certification).

(8) *Availability of Certification Information.* The Service encourages manufacturers to provide a listing of applicable certification information with respect to their products on their websites to assist taxpayers in determining whether their purchases qualify for the credit for residential energy efficient property.

.03 *Additional Requirements.* A taxpayer claiming a credit with respect to an expenditure is responsible for determining whether the expenditure appropriately relates to a qualifying dwelling unit (within the meaning of section 3.01(2) of this notice) and cannot rely on a manufacturer's certification for that purpose.

.04 *Labor Costs*. Section 25D allows the credit for expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of residential energy efficient property described in section 3.01 of this notice and for piping or wiring to interconnect such property to the dwelling unit.

SECTION 4. SPECIAL RULES FOR JOINT OCCUPANCY

.01 If a dwelling unit is jointly occupied and used during any calendar year as a residence by two or more individuals, then the maximum amount of qualified fuel cell expenditures which may be taken into account for purposes of § 25D(a) by all individuals with respect to the dwelling unit during the calendar year is $1,667 for each half kilowatt of capacity of the fuel cell power plant to which such expenditures relate.

.02 The amount of expenditures taken into account under section 4.01 of this notice by any individual for a taxable year is equal to the lesser of—

(1) The amount of expenditures made by the individual with respect to the dwelling during the calendar year, or

(2) The maximum amount of expenditures that may be taken into account by all individuals under section 4.01 of this notice multiplied by a fraction—

(a) The numerator of which is the amount of expenditures made by the individual with respect to the dwelling during the calendar year, and

(b) The denominator of which is the total expenditures made by all individuals with respect to the dwelling during the calendar year.

SECTION 5. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–2134.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this notice is in section 3. This information is required to be collected and retained in order to ensure that property meets the requirements for the residential energy efficient property credit under § 25D. This information will be used to determine whether the property for which manufacturers provide certifications is property that qualifies for the credit. The collection of information is required to obtain a benefit from manufacturers' certification statements that property meets certain requirements that must be satisfied to qualify for the credit. The likely respondents are corporations, partnerships, and individuals.

The estimated total annual reporting burden is 350 hours.

The estimated annual burden per respondent varies from 2 hours to 3 hours, depending on individual circumstances, with an estimated average burden of 2.5 hours to complete the requests for certification required under this notice. The estimated number of respondents is 140.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Martha S. McRee of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Martha S. McRee at (202) 622–3110 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, §§ 172, 6411.)

Rev. Proc. 2009–26

SECTION 1. PURPOSE

.01 In February 2009, the American Recovery and Reinvestment Tax Act of 2009, Div. B of Pub. L. No. 111–5, 123 Stat. 115 (the Act) was signed into law. Section 1211 of the Act allows an eligible small business (ESB) to elect to carry back a 2008 net operating loss (NOL) for a period of 3, 4, or 5 years to offset taxable income in those preceding taxable years. Prior to the Act, taxpayers generally could carry back an NOL only two taxable years. On March 16, 2009, the Internal Revenue Service and Treasury Department issued Rev. Proc. 2009–19, 2009–14 I.R.B. 747, advising taxpayers how to elect the 3-, 4-, or 5-year carryback.

.02 The Service has received many claims from taxpayers that seek a 3-, 4-, or 5-year carryback but that inadvertently have not made a valid election in accordance with Rev. Proc. 2009–19. These inadvertent failures may be due to the fact that the enactment of § 1211 and issuance of Rev. Proc. 2009–19 occurred midway through the current tax return filing season.

.03 To provide certainty to taxpayers and to implement the intent of Congress in providing an extended carryback period, this revenue procedure modifies Rev. Proc. 2009–19 to provide that an ESB may elect a 3-, 4-, or 5-year carryback period simply by filing a Form 1045, Form 1139, or amended return that carries back

the NOL for 3, 4, or 5 years. Although Forms 1045 and 1139 ordinarily are due within 12 months after the taxable year of the NOL, § 172(b)(1)(H)(iii) requires that the taxpayer elect a 3-, 4-, or 5-year carryback within 6 months after the due date (excluding extensions) of the return for the taxable year of the NOL. Thus, a taxpayer that seeks to make a timely § 172(b)(1)(H) election using Form 1045, Form 1139, or an amended return must file the form in advance of its ordinary due date.

.04 This revenue procedure also prescribes: (1) how a taxpayer elects a 3-, 4-, or 5-year carryback if the taxpayer previously filed an election to forgo an NOL carryback period; and (2) how a taxpayer elects a 3-, 4-, or 5-year carryback if the taxpayer is a partner of an ESB that is a partnership, a shareholder of an ESB that is an S corporation, or a sole proprietor.

SECTION 2. BACKGROUND

.01 Section 172(a) allows a deduction equal to the aggregate of the NOL carryovers and carrybacks to the taxable year. Section 172(b)(1)(A)(i) provides that an NOL for any taxable year generally must be carried back to each of the 2 years preceding the taxable year of the NOL. Section 172(b)(3) provides that any taxpayer entitled to a carryback period under § 172(b)(1) may make an irrevocable election to relinquish the carryback period with respect to an NOL for any taxable year.

.02 Section 6411(a) provides that a taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by an NOL carryback from any taxable year. Section 6411(a) also provides that the application must be filed on or after the date of filing for the return for the taxable year of the NOL from which the carryback results and within a period of 12 months after that taxable year or, with respect to any portion of a business credit carryback attributable to an NOL from a subsequent taxable year, within a period of 12 months from the end of the subsequent taxable year. Section 6411(b) provides a 90-day period during which the Service will make a limited examination of the application to discover omissions and errors of computation and determine the amount of the decrease in tax attributable to the carryback. The Service may disallow, without further action, any application that contains errors of computation that cannot be corrected within the 90-day period or that contains material omissions. The decrease in tax attributable to the carryback will be applied against unpaid amounts of tax. Any remainder of the decrease will, within the 90-day period, be credited or refunded.

.03 Section 172(b)(1)(H) permits an ESB to carry back its applicable 2008 NOL to 3, 4, or 5 years preceding the taxable year of the NOL, as the ESB elects.

.04 Section 172(b)(1)(H)(iv) provides that the term "eligible small business" has the meaning given by § 172(b)(1)(F)(iii), except that § 448(c) is applied by substituting "$15 million" for "$5 million" each place it appears. Section 172(b)(1)(F)(iii) provides that a small business is a corporation or partnership that meets the gross receipts test of § 448(c) for the taxable year in which the loss arose (or in the case of a sole proprietorship, that would meet such test if the proprietorship were a corporation).

.05 Section 448 generally prohibits certain taxpayers from using the cash receipts and disbursements method of accounting. Section 448(b)(3) provides an exception to this requirement in the case of any corporation or partnership if, for all prior taxable years beginning after December 31, 1985, the entity (or any predecessor) met the $5 million gross receipts test of § 448(c). Section 448(c)(1) provides that a corporation or partnership meets the $5 million gross receipts test for any prior taxable year if the average annual gross receipts of the entity for the 3-taxable-year period ending with that prior taxable year does not exceed $5 million. Section 448(c)(2) (aggregation rules) generally provides that all persons treated as a single employer under subsection (a) or (b) of § 52 or subsection (m) or (o) of § 414 are treated as one person for purposes of § 448(c)(1).

.06 The $5 million gross receipts test of § 448(c) is applied to a taxpayer's prior taxable year by determining the average annual gross receipts for the 3-year period that ends with that prior taxable year. Under §172(b)(1)(F)(iii), in order to be a small business, a taxpayer must meet the gross receipts test of § 448(c) for the taxable year in which the NOL arose. Consequently, to determine if a taxpayer is a small business for purposes of § 172(b)(1)(F)(iii), the taxable year in which the NOL arose is the last taxable year of the 3-year period to which the test is applied.

.07 Section 172(b)(1)(H)(ii)(I) provides that the term "applicable 2008 net operating loss" means the taxpayer's NOL for any taxable year ending in 2008. However, under § 172(b)(1)(H)(ii)(II), the taxpayer may elect instead to have the term mean the taxpayer's NOL for any taxable year beginning in 2008.

.08 Section 172(b)(1)(H)(iii) provides that any election under § 172(b)(1)(H) is required to be made in such a manner as may be prescribed by the Secretary, and must be made by the due date (including extension of time) for filing the taxpayer's return for the taxable year of the NOL. The election is irrevocable and may be made only for one taxable year.

.09 Section 1211(d)(2) of the Act provides that in the case of an applicable 2008 NOL for a taxable year ending before the date of enactment of the Act (February 17, 2009), (A) a previous election made under § 172(b)(3) for the NOL may be revoked on or before April 17, 2009; (B) the § 172(b)(1)(H) election for the NOL is treated as timely if made on or before April 17, 2009; and (C) an application under § 6411(a) with respect to the NOL is treated as timely if filed on or before April 17, 2009.

SECTION 3. SCOPE

This revenue procedure applies to any taxpayer that is an ESB, a partner of a partnership that is an ESB, a shareholder in an S corporation that is an ESB, or a sole proprietor of a business that is an ESB, and that incurred an NOL for any taxable year ending in 2008 or beginning in 2008.

SECTION 4. APPLICATION

.01 *Time and manner of making the election under § 172(b)(1)(H).*

(1) *In general.* A taxpayer within the scope of this revenue procedure that has an applicable 2008 NOL may make the election under § 172(b)(1)(H) by following the procedure described in either section 4.01(2) or section 4.01(3) of this revenue procedure.

(2) *Electing on original return.* A taxpayer may make the election under § 172(b)(1)(H) by attaching a statement

to the taxpayer's timely filed federal income tax return for the taxable year in which the applicable 2008 NOL arises. The statement must state that the taxpayer is electing to apply § 172(b)(1)(H) and specify the length of the NOL carryback period elected by the taxpayer (3, 4, or 5 years). If the taxpayer's taxable year of the applicable 2008 NOL ends before February 17, 2009, the taxpayer must make the election on or before the later of the due date (including extensions of time) of the taxpayer's return for that taxable year or April 17, 2009.

(3) *Electing on an appropriate form*. A taxpayer that did not make the election under § 172(b)(1)(H) using the procedures of section 4.01(2) of this revenue procedure, and did not elect to forgo the NOL carryback period under § 172(b)(3), may make the election under § 172(b)(1)(H) as follows:

(a) *What to file*.

(i) A taxpayer may make the election under § 172(b)(1)(H) by filing the appropriate form applying the NOL carryback period chosen by the taxpayer. No statement or label is required with the appropriate form. The appropriate form is:

(A) For corporations: Form 1139, *Corporation Application for Tentative Refund,* or Form 1120X, *Amended U.S. Corporation Income Tax Return*.

(B) For individuals: Form 1045, *Application for Tentative Refund*, or Form 1040X, *Amended U.S. Individual Income Tax Return*.

(C) For estates or trusts: Form 1045, or amended Form 1041, *U.S. Income Tax Return for Estates and Trusts*.

(ii) A taxpayer that makes the election under § 172(b)(1)(H) by filing an amended return must file the return for the earliest taxable year to which the taxpayer is carrying back the applicable 2008 NOL. The taxpayer should not file an amended return for the applicable 2008 NOL taxable year.

(b) *When to file*. The appropriate form must be filed on or before the later of the date that is 6 months after the due date (excluding extensions) for filing the taxpayer's return for the taxable year of the applicable 2008 NOL or April 17, 2009.

(c) *Additional rules*. If a taxpayer makes the election by filing an appropriate form that amends a prior refund claim, the amendment also will apply to a carryback of any alternative tax NOL for the same taxable year. In the case of an amended application for a tentative carryback adjustment, the 90-day period described in § 6411(b) will begin on the date the amended application is filed.

.02 *Revocation of the election to waive NOL carryback period*. A taxpayer within the scope of this revenue procedure that previously elected under § 172(b)(3) to forgo the carryback period for an applicable 2008 NOL for a taxable year ending before February 17, 2009, may revoke that election and make the election under § 172(b)(1)(H). Any revocation of the election to forgo the NOL carryback period also will apply to a carryback of any alternative tax NOL for the same taxable year. The taxpayer makes the revocation and election by following the procedures of section 4.01(3) of this revenue procedure. In addition, the taxpayer should type or print across the top of the appropriate form "Revocation of NOL Carryback Waiver Pursuant to Rev. Proc. 2009–19." The taxpayer must file the revocation and new election under § 172(b)(1)(H) on or before April 17, 2009.

.03 *Partnerships, S corporations, and sole proprietorships*.

(1) If the taxpayer is a partner in a partnership that qualifies as an ESB, the taxpayer may make the § 172(b)(1)(H) election for its distributive share of the qualifying ESB partnership income, gain, loss, and deduction that is both allocable to the taxpayer under § 704 and allowed in calculating the taxpayer's applicable 2008 NOL.

(2) If the taxpayer is a shareholder in an S corporation that qualifies as an ESB, the taxpayer may make the § 172(b)(1)(H) election for its *pro rata* share of the qualifying ESB S corporation income, gain, loss, and deduction under § 1366 that is allowed in calculating the shareholder's applicable 2008 NOL.

(3) If the taxpayer is an owner of a sole proprietorship that qualifies as an ESB, the taxpayer may make the § 172(b)(1)(H) election for the qualifying ESB sole proprietorship income, gain, loss, and deduction that is allowed in calculating the taxpayer's applicable 2008 NOL.

(4) In determining whether a partnership, S corporation, or sole proprietorship qualifies as an ESB, the gross receipts test applies at the partnership, corporate, or sole proprietorship level. The aggregation rules of § 448(c)(2) apply to determine whether the partnership, S corporation, or sole proprietorship meets the gross receipts test of § 448(c).

(5) The amount of the taxpayer's applicable 2008 NOL that the taxpayer may carry back under §172(b)(1)(H) is limited to the lesser of:

(a) The taxpayer's items of income, gain, loss or deduction that are allowed in calculating the taxpayer's applicable 2008 NOL and are from one or more partnerships, S corporations or sole proprietorships that qualify as ESBs, or

(b) The taxpayer's applicable 2008 NOL.

(6) *Examples*.

(a) *Example 1*. Partnerships A, B, and C have average annual gross receipts of $10 million, $12 million, and $14 million, respectively. Partner T owns a 40% interest in each partnership. None of the partnerships is required to be aggregated with any other entity for purposes of the aggregation rules of § 448(c)(2). Subject to the limitations in section 4.03(5) of this revenue procedure, Partner T may apply its election under § 172(b)(1)(H) to the portion of its applicable 2008 NOL attributable to its distributive share of the income, gain, loss, and deduction of each of Partnerships A, B, and C.

(b) *Example 2*. The facts are the same as in *Example 1*, except that Partnerships A and B are under common control within the meaning of § 52(b)(1). Accordingly, Partnerships A and B are treated as one person under the aggregation rules of § 448(c)(2). Because the aggregated average annual gross receipts of Partnerships A and B exceed $15 million, Partnerships A and B do not qualify as ESBs. Partner T may not apply its election under § 172(b)(1)(H) to the portion of its applicable 2008 NOL attributable to its distributive share of the income, gain, loss, and deduction of Partnerships A and B. However, subject to the limitations in section 4.03(5) of this revenue procedure, Partner T may apply its election under § 172(b)(1)(H) to the portion of its applicable 2008 NOL attributable to its distributive share of income, gain, loss, and deduction of Partnership C.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2009–19 is modified and, as modified, is superseded.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for NOLs arising in taxable years ending after December 31, 2007.

SECTION 7. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under the following control numbers: 1545–0074 Form 1040 *(U.S. Individual Income Tax Return)* and Form 1040X (*Amended U.S. Individual Income Tax Return*); 1545–0123 Form 1120 (*U.S. Corporation Income Tax Return*); 1545–0132 Form 1120X (*Amended U.S. Corporation Income Tax Return*);1545–0092 Form 1041 (*U.S. Income Tax Return for Estates and Trusts*); 1545–0098 Form 1045 (*Application for Tentative Refund*); 1545–0582 Form 1139 (*Corporation Application for Tentative Refund*). For further information, please refer to the Paperwork Reduction Act statements accompanying these forms.

DRAFTING INFORMATION

The principal author of this revenue procedure is Seoyeon Park of the Office of the Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Park at (202) 622–4960 (not a toll-free call).

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26 CFR 601.601: Rules and regulations.
(Also Part I, §§ 25, 103, 143; 1.25–4T, 1.103–1, 6a.103A–2.)

Rev. Proc. 2009–27

SECTION 1. PURPOSE

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

SECTION 2. BACKGROUND

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

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

.03 Section 143(f) imposes eligibility requirements concerning the maximum income of mortgagors for whom financing may be provided by qualified mortgage bonds. Section 25(c)(2)(A)(iii)(IV) provides that recipients of mortgage credit certificates must meet the income requirements of § 143(f). Generally, under §§ 143(f)(1) and 25(c)(2)(A)(iii)(IV), these income requirements are met only if all owner-financing under a qualified mortgage bond and all certified indebtedness amounts under a mortgage credit certificate program are provided to mortgagors whose family income is 115 percent or less of the applicable median family income. Under § 143(f)(6), the income limitation is reduced to 100 percent of the applicable median family income if there are fewer than three individuals in the family of the mortgagor.

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

.05 Section 143(f)(5) provides for an upward adjustment of the income limitations in certain high housing cost areas. Under § 143(f)(5)(C), a high housing cost area is a statistical area for which the housing cost/income ratio is greater than 1.2. The housing cost/income ratio is determined under § 143(f)(5)(D) by dividing (a) the applicable housing price ratio by (b) the ratio that the area median gross income bears to the median gross income for the United States. The applicable housing price ratio is the new housing price ratio (new housing average purchase price for the area divided by the new housing average purchase price for the United States) or the existing housing price ratio (existing housing average area purchase price divided by the existing housing average purchase price for the United States), whichever results in the housing cost/income ratio being closer to 1. This income adjustment applies only to bonds issued, and nonissued bond amounts elected, after December 31, 1988. *See* § 4005(h) of the Technical and Miscellaneous Revenue Act of 1988, 1988–3 C.B. 1, 311 (1988).

.06 The Department of Housing and Urban Development (HUD) has computed the median gross income for the United States, the states, and statistical areas within the states. The income information was released to the HUD regional offices on March 19, 2009, and may be obtained by calling the HUD reference service at 1–800–245–2691. The income information is also available at HUD's World Wide Web site, *http:huduser.org/datasets/il.html*, which provides a menu from which you may select the year and type of data of interest. The Internal Revenue Service annually publishes the median gross income for the United States.

.07 The most recent nationwide average purchase prices and average area purchase price safe harbor limitations were published on March 16, 2009, in Rev. Proc. 2009–18, 2009–11 I.R.B. 670.

SECTION 3. APPLICATION

.01 When computing the housing cost/income ratio under § 143(f)(5), issuers of qualified mortgage bonds and mortgage credit certificates must use $64,000 as the median gross income for the United States. *See* § 2.06 of this revenue procedure.

.02 When computing the housing cost/income ratio under § 143(f)(5), issuers of qualified mortgage bonds and mortgage credit certificates must use the area median gross income figures released by HUD on March 19, 2009. *See* § 2.06 of this revenue procedure.

SECTION 4. EFFECT ON OTHER REVENUE PROCEDURES

.01 Rev. Proc. 2008–19, 2008–11 I.R.B. 594, is obsolete except as provided in § 5.02 of this revenue procedure.

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

SECTION 5. EFFECTIVE DATES

.01 Issuers must use the United States and area median gross income figures specified in § 3 of this revenue procedure for commitments to provide financing that are made, or (if the purchase precedes the financing commitment) for residences that are purchased, in the period that begins on March 19, 2009, and ends on the date when these United States and area median gross income figures are rendered obsolete by a new revenue procedure.

.02 Notwithstanding § 5.01 of this revenue procedure, issuers may continue to rely on the United States and area median gross income figures specified in Rev. Proc. 2008–19 with respect to bonds originally sold and nonissued bond amounts elected not later than May 28, 2009, if the commitments or purchases described in § 5.01 are made not later than July 27, 2009.

DRAFTING INFORMATION

The principal authors of this revenue procedure are David White and Timothy Jones of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Mr. White or Mr. Jones at (202) 622–3980 (not a toll-free call).

Part IV. Items of General Interest

Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2009–37

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on May 11, 2009, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Community Housing and Development Corporation
Las Vegas, NV

Jordan Ministries, Inc
Dover, FL

Foundations Status of Certain Organizations

Announcement 2009–38

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:

Agape Shelter, Yucaipa, CA
Allentown Area Hunters, Inc., Barnegat, NJ
Alliance for Christian Fellowship International, Burnet, TX
Ambassadors for Christ Theological Seminary & Bible College, San Leandro, CA
Andover Hook and Ladder Company, Andover, MA
Anthrophotographer, Inc., Jefferson, TX
Bangladesh Children Progress Organization, Astoria, NY
Basic Life Support, Inc., Miami, FL
Boeswan Arts Foundation, Chicago, IL
Bridgewater Homes Assisted Living, Inc., Charlotte, NC
Brighter Future, Compton, CA
Camden City Youth Services Commission, Inc., Camden, NJ
Canaan Community Development Corporation NFP, Buchanan, MI
Career Development and Youth Services, Inc., Redan, GA
C & G Music Tours for Children, Inc., Sacramento, CA
ChristGod Resolution Worldwide Power Ministries of Samual Arkisan, Leicester, EN
Community Redevelopment Group of Southeastern Michigan, Inc., Detroit, MI
Comprehensive Scholarship Resource Center, Detroit, MI
Debtwinners Credit Counseling, Inc., Lincoln University, PA
Dogtown Civic Association, Philadelphia, PA
Education Center for New Life Changes, Inc., Naples, FL
Endeavors Supporting Cultural Advancements Programs & Education Inc., New Milford, CT
Earnestine Abuse Center for Women and Youth, Inc., Temple Hills, MD
Family Life Community Development Corporation, Inc., Landover, MD
First Genesis Development Corporation, Rochester, NY
First Nonprofit Educational Foundation, Chicago, IL
Friend Indeed Foundation, Richardson, TX
George Hamilton Taylor Family Org., Salt Lake City, UT
Good Cause, Inc., Atlanta, GA
Granville Residents Opposed to Waste, Inc., Butner, NC
Greater South Florida Community Development Corporation, Miami, FL
Guardian Angels to Everyone, Gladstone, ND
Hawaii Island Helping the Children Foundation, Kurtistown, HI
Heaven on Earth Kingdom Ministries, Inc., Gary, IN
Houlton Band of Maliseet Development Corporation, Littleton, ME
Humani, Inc., Walnut Creek, CA
Improved Living Foundation, Inc., Houston, TX
Institute for Careers and Leadership Development, Inc., Houston, TX
Institute for Christian Understanding, Midland, MI
Intertribal Voices of Children and Families, Grand Fork, ND
Jesse the Law Torres Boxing Club and Drop In Youth Center, Naoerville, IL

Juan Francisco Gasca Non Profit Fund, Palos Hills, IL
K E A P, Inc., Elkhart, IN
Lifestyle Incorporation for the Northside Community, Inc., Jacksonville, FL
Matthews Memorial Housing, Inc., Washington, DC
Mayfair Youth Challenge, Inc., Baton Rouge, LA
MC2, Inc., New Castle, PA
Miami Minority Health Center, Inc., Miami, FL
Mother Katherine Drexel Academy, Inc., Atlanta, GA
National Collegiate Hockey Hall of Fame, Inc., Grand Forks, ND
Nevada Youth Outreach, Las Vegas, NV
New Grafton Baptist Church Outreach Ministries, Newport News, VA
New Jerusalem Ministries, Inc., Milfa, VA
New Horizon Academic Learning and Training Center, Inc., Wauchula, FL
NFL Communications, Inc., St. Thomas, VI
Partners In Child Safety of Lake Charles, Inc., Lake Charles, LA
Prophetic Word Ministries, Lawton, OK
Reaching Over Boundaries Foundation, San Francisco, CA
Rockbend Outreach Community Center, Pittsburgh, PA
Rosies Adventure Club, Houston, TX
Sandlot Baseball, Lafayette, LA
Senior Source of Metropolitan New Jersey, West Orange, NJ
S.I.S.T.E.R.S Outreach, Inc., Gretna, LA
South Providence Self Help Center, Providence, RI
Styling Your Life, Madison, MS
TAME Foundation, Inc., Charleston, SC
Vital Science, Inc., Los Angeles, CA
Way of the Heart Ministries, Inc., New Boston, TX
Weekends Only, Inc., Brooklyn, NY
Westside Community Development Corporation, Ventura, CA
Womens Healing Network, Inc., Houston, TX

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 laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

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

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

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

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

Abbreviations

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

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

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