Internal Revenue bulletin

Bulletin No. 2009-47
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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. 2009–36, page 650.

2009 base period T-bill rate. The "base period T-bill rate" for the period ending September 30, 2009, is published as required by section 995(f) of the Code.

REG–135005–07, page 681.

Proposed regulations under section 1563 of the Code clarify which corporations are included in a controlled group of corporations. The regulations clarify that a corporation that satisfies the controlled group rules for stock ownership and qualification is a member of such group, without regard to its status as a component member.

EMPLOYEE PLANS

Notice 2009–88, page 654.

Weighted average interest rate update; corporate bond indices; 30-year Treasury securities; segment rates. This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in November 2009; the 24-month average segment rates; the funding transitional segment rates applicable for November 2009; and the minimum present value transitional rates for October 2009.

EXEMPT ORGANIZATIONS

REG–155929–06, page 665.

Proposed regulations under section 509 of the Code, required by the Pension Protection Act of 2006, provide rules for supporting organizations that are operated "in connection with" their supported organization(s) (called "Type III supporting organizations"). The proposed regulations specify the information that Type III supporting organizations are required to provide their supported organizations. The proposed regulations also provide the criteria that Type III supporting organizations must satisfy in order to qualify as "functionally integrated." For those Type III supporting organizations that do not qualify as functionally integrated, the regulations require an annual payout equal to five percent of the fair market value of the organization's non-exempt use assets, a payout requirement modeled on that imposed on private foundations under section 4942.

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 683.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

EXCISE TAX

REG–155929–06, page 665.
Proposed regulations under section 509 of the Code, required by the Pension Protection Act of 2006, provide rules for supporting organizations that are operated "in connection with" their supported organization(s) (called "Type III supporting organizations"). The proposed regulations specify the information that Type III supporting organizations are required to provide their supported organizations. The proposed regulations also provide the criteria that Type III supporting organizations must satisfy in order to qualify as "functionally integrated." For those Type III supporting organizations that do not qualify as functionally integrated, the regulations require an annual payout equal to five percent of the fair market value of the organization's non-exempt use assets, a payout requirement modeled on that imposed on private foundations under section 4942.

ADMINISTRATIVE

REG–160871–04, page 657.
Proposed regulations under section 6501 of the Code relate to the exception to the general three-year period of limitations on assessment under section 6501(c)(10) for listed transactions that a taxpayer failed to disclose as required under section 6011.

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 995.—Taxation of DISC Income to Shareholders

2009 base period T-bill rate. The "base period T-bill rate" for the period ending September 30, 2009, is published as required by section 995(f) of the Code.

Rev. Rul. 2009–36

Section 995(f)(1) of the Internal Revenue Code provides that a shareholder of a DISC shall pay interest each taxable year in an amount equal to the product of the shareholder's DISC-related deferred tax liability for the year and the "base period T-bill rate." Under section 995(f)(4), the base period T-bill rate is the annual rate of interest determined by the Secretary to be equivalent to the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder. The base period T-bill rate for the period ending September 30, 2009, is 0.630 percent.

Pursuant to section 6222 of the Code, interest must be compounded daily. The table below provides factors for compounding the base period T-bill rate daily for any number of days in the shareholder's taxable year (including a 52–53 week accounting period) for the 2009 base period T-bill rate. To compute the amount of the interest charge for the shareholder's taxable year, multiply the amount of the shareholder's DISC-related deferred tax liability (as defined in section 995(f)(2)) for that year by the base period T-bill rate factor corresponding to the number of days in the shareholder's taxable year for which the interest charge is being computed. Generally, one would use the factor for 365 days. One would use a different factor only if the shareholder's taxable year for which the interest charge being determined is a short taxable year, if the shareholder uses the 52–53 week taxable year, or if the shareholder's taxable year is a leap year.

For the base period T-bill rates for the periods ending in prior years, see Rev. Rul. 2008–51, 2008–2 C.B. 1171; Rev. Rul. 2007–64, 2007–2 C.B. 953; Rev. Rul. 2006–54, 2006–2 C.B. 834; Rev. Rul. 2005–70, 2005–2 C.B. 919; Rev. Rul. 2004–99, 2004–2 C.B. 720; Rev. Rul. 2003–2, 2003–1 C.B. 251; Rev. Rul. 2002–68, 2002–2 C.B. 808; and Rev. Rul. 2001–56, 2001–2 C.B. 500.

DRAFTING INFORMATION

The principal author of this revenue ruling is Teresa B. Hughes of the Office of Associate Chief Counsel (International). For further information regarding this revenue ruling, contact Teresa B. Hughes at (202) 622–3850 (not a toll-free call).

2009 ANNUAL RATE,
COMPOUNDED DAILY

0.630 PERCENT

DAYS	FACTOR
1	.000017260
2	.000034521
3	.000051782
4	.000069043
5	.000086304
6	.000103566
7	.000120828
8	.000138091
9	.000155353
10	.000172616
11	.000189879
12	.000207143
13	.000224407
14	.000241671
15	.000258935
16	.000276200
17	.000293465
18	.000310731
19	.000327996
20	.000345262
21	.000362528
22	.000379795
23	.000397062
24	.000414329
25	.000431596

2009 ANNUAL RATE,
COMPOUNDED DAILY

0.630 PERCENT

DAYS	FACTOR
26	.000448864
27	.000466132
28	.000483400
29	.000500669
30	.000517938
31	.000535207
32	.000552477
33	.000569746
34	.000587016
35	.000604287
36	.000621558
37	.000638829
38	.000656100
39	.000673371
40	.000690643
41	.000707916
42	.000725188
43	.000742461
44	.000759734
45	.000777007
46	.000794281
47	.000811555
48	.000828829
49	.000846104
50	.000863379
51	.000880654
52	.000897929
53	.000915205
54	.000932481
55	.000949758
56	.000967034
57	.000984311
58	.001001589
59	.001018866
60	.001036144
61	.001053422
62	.001070701
63	.001087979
64	.001105258
65	.001122538

2009 ANNUAL RATE, COMPOUNDED DAILY 0.630 PERCENT	
DAYS	FACTOR
66	.001139817
67	.001157097
68	.001174378
69	.001191658
70	.001208939
71	.001226220
72	.001243502
73	.001260783
74	.001278065
75	.001295348
76	.001312630
77	.001329913
78	.001347196
79	.001364480
80	.001381764
81	.001399048
82	.001416332
83	.001433617
84	.001450902
85	.001468187
86	.001485473
87	.001502759
88	.001520045
89	.001537332
90	.001554618
91	.001571906
92	.001589193
93	.001606481
94	.001623769
95	.001641057
96	.001658346
97	.001675634
98	.001692924
99	.001710213
100	.001727503
101	.001744793
102	.001762083
103	.001779374
104	.001796665
105	.001813956

2009 ANNUAL RATE, COMPOUNDED DAILY 0.630 PERCENT	
DAYS	FACTOR
106	.001831248
107	.001848540
108	.001865832
109	.001883124
110	.001900417
111	.001917710
112	.001935004
113	.001952297
114	.001969591
115	.001986886
116	.002004180
117	.002021475
118	.002038770
119	.002056066
120	.002073361
121	.002090658
122	.002107954
123	.002125251
124	.002142547
125	.002159845
126	.002177142
127	.002194440
128	.002211738
129	.002229037
130	.002246335
131	.002263635
132	.002280934
133	.002298234
134	.002315533
135	.002332834
136	.002350134
137	.002367435
138	.002384736
139	.002402038
140	.002419339
141	.002436641
142	.002453944
143	.002471246
144	.002488549
145	.002505853

2009 ANNUAL RATE, COMPOUNDED DAILY 0.630 PERCENT	
DAYS	FACTOR
146	.002523156
147	.002540460
148	.002557764
149	.002575068
150	.002592373
151	.002609678
152	.002626983
153	.002644289
154	.002661595
155	.002678901
156	.002696208
157	.002713515
158	.002730822
159	.002748129
160	.002765437
161	.002782745
162	.002800053
163	.002817362
164	.002834671
165	.002851980
166	.002869289
167	.002886599
168	.002903909
169	.002921220
170	.002938530
171	.002955841
172	.002973153
173	.002990464
174	.003007776
175	.003025088
176	.003042401
177	.003059714
178	.003077027
179	.003094340
180	.003111654
181	.003128968
182	.003146282
183	.003163597
184	.003180911
185	.003198227

2009 ANNUAL RATE, COMPOUNDED DAILY 0.630 PERCENT		2009 ANNUAL RATE, COMPOUNDED DAILY 0.630 PERCENT		2009 ANNUAL RATE, COMPOUNDED DAILY 0.630 PERCENT	
DAYS	FACTOR	DAYS	FACTOR	DAYS	FACTOR
186	.003215542	226	.003908406	266	.004601749
187	.003232858	227	.003925734	267	.004619089
188	.003250174	228	.003943062	268	.004636429
189	.003267490	229	.003960390	269	.004653769
190	.003284807	230	.003977719	270	.004671110
191	.003302124	231	.003995048	271	.004688450
192	.003319441	232	.004012377	272	.004705792
193	.003336759	233	.004029707	273	.004723133
194	.003354077	234	.004047036	274	.004740475
195	.003371395	235	.004064367	275	.004757817
196	.003388713	236	.004081697	276	.004775159
197	.003406032	237	.004099028	277	.004792502
198	.003423351	238	.004116359	278	.004809845
199	.003440670	239	.004133690	279	.004827188
200	.003457990	240	.004151022	280	.004844532
201	.003475310	241	.004168354	281	.004861876
202	.003492630	242	.004185686	282	.004879220
203	.003509951	243	.004203018	283	.004896565
204	.003527272	244	.004220351	284	.004913909
205	.003544593	245	.004237684	285	.004931254
206	.003561914	246	.004255018	286	.004948600
207	.003579236	247	.004272351	287	.004965946
208	.003596558	248	.004289685	288	.004983292
209	.003613881	249	.004307020	289	.005000638
210	.003631203	250	.004324354	290	.005017984
211	.003648526	251	.004341689	291	.005035331
212	.003665849	252	.004359025	292	.005052678
213	.003683173	253	.004376360	293	.005070026
214	.003700497	254	.004393696	294	.005087374
215	.003717821	255	.004411032	295	.005104722
216	.003735145	256	.004428368	296	.005122070
217	.003752470	257	.004445705	297	.005139419
218	.003769795	258	.004463042	298	.005156768
219	.003787120	259	.004480379	299	.005174117
220	.003804446	260	.004497717	300	.005191467
221	.003821772	261	.004515055	301	.005208817
222	.003839098	262	.004532393	302	.005226167
223	.003856425	263	.004549732	303	.005243517
224	.003873752	264	.004567070	304	.005260868
225	.003891079	265	.004584410	305	.005278219

2009 ANNUAL RATE,
COMPOUNDED DAILY

0.630 PERCENT

DAYS	FACTOR
306	.005295570
307	.005312922
308	.005330274
309	.005347626
310	.005364979
311	.005382332
312	.005399685
313	.005417039
314	.005434392
315	.005451746
316	.005469101
317	.005486455
318	.005503810
319	.005521166
320	.005538521
321	.005555877
322	.005573233
323	.005590590
324	.005607946
325	.005625304
326	.005642661
327	.005660019
328	.005677377
329	.005694735
330	.005712093

2009 ANNUAL RATE,
COMPOUNDED DAILY

0.630 PERCENT

DAYS	FACTOR
331	.005729452
332	.005746811
333	.005764171
334	.005781531
335	.005798891
336	.005816251
337	.005833612
338	.005850973
339	.005868334
340	.005885696
341	.005903057
342	.005920420
343	.005937782
344	.005955145
345	.005972508
346	.005989871
347	.006007235
348	.006024599
349	.006041963
350	.006059328
351	.006076693
352	.006094058
353	.006111423
354	.006128789
355	.006146155

2009 ANNUAL RATE,
COMPOUNDED DAILY

0.630 PERCENT

DAYS	FACTOR
356	.006163521
357	.006180888
358	.006198255
359	.006215622
360	.006232990
361	.006250358
362	.006267726
363	.006285094
364	.006302463
365	.006319832
366	.006337201
367	.006354571
368	.006371941
369	.006389311
370	.006406682
371	.006424053

Part III. Administrative, Procedural, and Miscellaneous

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2009–88

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code as in effect for plan years beginning before 2008. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), the 24-month average segment rates, and the funding transitional segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the minimum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004 and by the Pension Protection Act of 2006 (PPA), provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 through 2007 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004–34, 2004–1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004–34 continues to apply in determining that rate. See Notice 2006–75, 2006–2 C.B. 366.

The composite corporate bond rate for October 2009 is 5.76 percent. Pursuant to Notice 2004–34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

For Plan Years Beginning in		Corporate Bond Weighted	Permissible Range	
Month	*Year*	Average	90% to	100%
November	2009	6.44	5.80	6.44

YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. For plan years beginning in 2008 and 2009, a transitional rule under § 430(h)(2)(G) provides that the segment rates are blended with the corporate bond weighted average as specified above. An election may be made under § 430(h)(2)(G)(iv) to use the segment rates without applying the transitional rule.

Notice 2007–81, 2007–2 C.B. 899, provides guidelines for determining the monthly corporate bond yield curve, the 24-month average corporate bond segment rates, and the funding transitional segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007–81, the monthly corporate bond yield curve derived from October 2009 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of October 2009 are, respectively, 2.60, 5.58, and 6.07. The three 24-month average corporate bond segment rates applicable for November 2009 under the election of § 430(h)(2)(G)(iv) are as follows:

First Segment	Second Segment	Third Segment
4.81	6.69	6.78

The transitional segment rates under § 430(h)(2)(G) applicable for November 2009, taking into account the corporate bond weighted average of 6.44 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	5.90	6.52	6.55
2009	5.35	6.61	6.67

The transitional rule of § 430(h)(2)(G) does not apply to plan years starting in 2010. Therefore, for a plan year starting in 2010 with a lookback month to November 2009, the funding segment rates are the three 24-month average corporate bond segment rates applicable for November 2009, listed above without blending for the transitional period.

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 417(e)(3)(A)(ii)(II) (prior to amendment by PPA) 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 rate of interest 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 October 2009 is 4.19 percent. The Service has determined this rate as the average of the daily determinations of yield for the reported days during October 2009 on the 30-year Treasury bond maturing in August 2039.

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in section 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below 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. The following rates were determined for plan years beginning in the month shown below.

For Plan Years Beginning in		30-Year Treasury Weighted	Permissible Range	
Month	*Year*	Average	90% to	105%
November	2009	4.36	3.93	4.58

MINIMUM PRESENT VALUE SEGMENT RATES

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. For plan years beginning in 2008 through 2011, the applicable interest rates are the monthly spot segment rates blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007–81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for October 2009, taking into account the October 2009 30-year Treasury rate of 4.19 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	3.87	4.47	4.57
2009	3.55	4.75	4.94
2010	3.24	5.02	5.32

DRAFTING INFORMATION

The principal author of this notice is Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at *RetirementPlanQuestions@irs.gov*.

Table I

Monthly Yield Curve for October 2009
Derived from October 2009 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	1.11	20.5	6.03	40.5	6.07	60.5	6.09	80.5	6.11
1.0	1.45	21.0	6.03	41.0	6.07	61.0	6.09	81.0	6.11
1.5	1.79	21.5	6.03	41.5	6.07	61.5	6.10	81.5	6.11
2.0	2.14	22.0	6.03	42.0	6.07	62.0	6.10	82.0	6.11
2.5	2.48	22.5	6.03	42.5	6.08	62.5	6.10	82.5	6.11
3.0	2.81	23.0	6.03	43.0	6.08	63.0	6.10	83.0	6.11
3.5	3.13	23.5	6.03	43.5	6.08	63.5	6.10	83.5	6.11
4.0	3.42	24.0	6.03	44.0	6.08	64.0	6.10	84.0	6.11
4.5	3.70	24.5	6.03	44.5	6.08	64.5	6.10	84.5	6.11
5.0	3.95	25.0	6.04	45.0	6.08	65.0	6.10	85.0	6.11
5.5	4.18	25.5	6.04	45.5	6.08	65.5	6.10	85.5	6.11
6.0	4.40	26.0	6.04	46.0	6.08	66.0	6.10	86.0	6.11
6.5	4.59	26.5	6.04	46.5	6.08	66.5	6.10	86.5	6.11
7.0	4.76	27.0	6.04	47.0	6.08	67.0	6.10	87.0	6.11
7.5	4.92	27.5	6.04	47.5	6.08	67.5	6.10	87.5	6.11
8.0	5.06	28.0	6.04	48.0	6.08	68.0	6.10	88.0	6.11
8.5	5.18	28.5	6.04	48.5	6.08	68.5	6.10	88.5	6.11
9.0	5.30	29.0	6.05	49.0	6.08	69.0	6.10	89.0	6.11
9.5	5.40	29.5	6.05	49.5	6.08	69.5	6.10	89.5	6.11
10.0	5.49	30.0	6.05	50.0	6.09	70.0	6.10	90.0	6.11
10.5	5.57	30.5	6.05	50.5	6.09	70.5	6.10	90.5	6.11
11.0	5.64	31.0	6.05	51.0	6.09	71.0	6.10	91.0	6.11
11.5	5.71	31.5	6.05	51.5	6.09	71.5	6.10	91.5	6.11
12.0	5.76	32.0	6.05	52.0	6.09	72.0	6.10	92.0	6.11
12.5	5.81	32.5	6.06	52.5	6.09	72.5	6.10	92.5	6.11
13.0	5.85	33.0	6.06	53.0	6.09	73.0	6.10	93.0	6.11
13.5	5.88	33.5	6.06	53.5	6.09	73.5	6.10	93.5	6.11
14.0	5.91	34.0	6.06	54.0	6.09	74.0	6.10	94.0	6.11
14.5	5.94	34.5	6.06	54.5	6.09	74.5	6.10	94.5	6.11
15.0	5.96	35.0	6.06	55.0	6.09	75.0	6.10	95.0	6.11
15.5	5.97	35.5	6.06	55.5	6.09	75.5	6.10	95.5	6.11
16.0	5.99	36.0	6.06	56.0	6.09	76.0	6.10	96.0	6.11
16.5	6.00	36.5	6.06	56.5	6.09	76.5	6.10	96.5	6.11
17.0	6.01	37.0	6.07	57.0	6.09	77.0	6.10	97.0	6.11
17.5	6.01	37.5	6.07	57.5	6.09	77.5	6.10	97.5	6.11
18.0	6.02	38.0	6.07	58.0	6.09	78.0	6.10	98.0	6.11
18.5	6.02	38.5	6.07	58.5	6.09	78.5	6.10	98.5	6.11
19.0	6.03	39.0	6.07	59.0	6.09	79.0	6.11	99.0	6.11
19.5	6.03	39.5	6.07	59.5	6.09	79.5	6.11	99.5	6.11
20.0	6.03	40.0	6.07	60.0	6.09	80.0	6.11	100.0	6.11

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Period of Limitations on Assessment for Listed Transactions Not Disclosed Under Section 6011

REG–160871–04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the exception to the general three-year period of limitations on assessment under section 6501(c)(10) of the Internal Revenue Code (Code) for listed transactions that a taxpayer failed to disclose as required under section 6011. These regulations will affect taxpayers who fail to disclose listed transactions in accordance with section 6011.

DATES: Written or electronic comments and requests for a public hearing must be received by January 5, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–160871–04), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–160871–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–160871–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Audra M. Dineen at (202) 622–4910; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor of the Publications and Regulations Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1940. The collection of information in these proposed regulations is in §301.6501(c)–1(g)(5). This information is required to provide the IRS, under penalties of perjury, with the information necessary to properly determine the taxpayer's applicable period of limitations. The collection of information in these proposed regulations is the same as the collection of information in Revenue Procedure 2005–26, 2005–1 C.B. 965, which was previously reviewed and approved by the Office of Management and Budget under control number 1545–1940. The collection of information in §301.6501(c)–1(g)(6) is the same as the collection of information required under section 6112. See §601.601(d)(2)(ii)(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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.

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6501(c) relating to exceptions to the period of limitations on assessment. Section 6501(a) provides that, except as otherwise provided, if a return is filed, tax with respect to that return must be assessed within 3 years from the later of the date the return was filed or the original due date of the return. Section 6501(c) contains several exceptions to the general three-year period of limitations on assessment.

Section 6501(c)(10) was added to the Code by section 814 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418, 1581 (2004)) (AJCA), enacted on October 22, 2004. Section 6501(c)(10) provides that, if a taxpayer fails to disclose a listed transaction as required under section 6011, the time to assess tax against the taxpayer with respect to that transaction will end no earlier than one year after the earlier of (1) the date on which the taxpayer furnishes the information required under section 6011, or (2) the date that a material advisor furnishes to the Secretary, upon written request, the information required under section 6112 with respect to the taxpayer related to the listed transaction. Accordingly, if neither the taxpayer nor a material advisor furnishes the requisite information, the period of limitations on assessment will remain open, and thus, the tax with respect to the listed transaction may be assessed at any time. Section 6501(c)(10) is effective for taxable years with respect to which the period of limitations on assessment did not expire prior to October 22, 2004.

As noted, section 6501(c)(10) applies when a taxpayer does not properly disclose a listed transaction (as defined in section 6707A(c)(2)) as required under section 6011. Taxpayers are required under section 6011 and the regulations under section 6011 (collectively referred to as the "section 6011 disclosure rules") to disclose certain information regarding each reportable transaction in which the taxpayer participated. See Treas. Reg. §§1.6011–4; 20.6011–4; 25.6011–4; 31.6011–4; 53.6011–4; 54.6011–4; and 56.6011–4. Among the transactions that are reportable are "listed transactions." See Treas. Reg. §1.6011–4(b)(2). Under the section 6011 disclosure rules, a listed transaction is a transaction that is the same as, or substantially similar to, a transaction that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance. Treas. Reg. §1.6011–4(b)(2). Section 6707A(c)(2) incorporates the same definition of listed transaction. For a list of transactions the

IRS has identified as listed transactions, see Notice 2009–59, 2009–31 I.R.B. 170. See §601.601(d)(2).

If the section 6011 disclosure rules require a taxpayer to disclose a listed transaction, the taxpayer must complete and file a disclosure statement in accordance with the section 6011 disclosure rules. The section 6011 disclosure rules currently require that Form 8886, "*Reportable Transaction Disclosure Statement*" (or successor form), be used as the disclosure statement and be completed in accordance with the instructions to the form. The Form 8886 (or successor form) generally must be attached to the taxpayer's original or amended tax return for each taxable year for which a taxpayer participates in a listed transaction. Treas. Reg. §1.6011–4(e)(1). If a listed transaction results in a loss that is carried back to a prior year, Form 8886 (or successor form) must be attached to the taxpayer's application for tentative refund or amended tax return for that prior year. The taxpayer also must send a copy of Form 8886 (or successor form) to the IRS Office of Tax Shelter Analysis (OTSA), generally at the same time that a disclosure statement pertaining to a particular listed transaction is first filed. Under the current rules, when a transaction is identified as a listed transaction after the date on which the taxpayer files a tax return (including an amended return) for a taxable year reflecting the taxpayer's participation in the listed transaction and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction, then the taxpayer must file Form 8886 (or successor form) with OTSA within 90 calendar days after the date the transaction became a listed transaction.

If a taxpayer does not disclose its participation in a listed transaction in accordance with all of the requirements of the section 6011 disclosure rules and section 6501(c)(10) applies, then the time to assess tax related to the listed transaction will expire no earlier than the earlier of (1) one year after the date on which the information described in section 6501(c)(10)(A) is provided, or (2) one year after the date on which the information described in section 6501(c)(10)(B) is provided.

The IRS and Treasury Department issued Rev. Proc. 2005–26, 2005–1 C.B. 965, on April 25, 2005, to provide interim guidance on section 6501(c)(10). The revenue procedure prescribes how taxpayers and material advisors should disclose listed transactions that were not properly disclosed under section 6011 in order to start the one-year period under section 6501(c)(10). Taxpayers may continue to rely on Rev. Proc. 2005–26 until temporary or final regulations are issued under section 6501(c)(10). See §601.601(d)(2). In that revenue procedure, the IRS and Treasury Department also requested comments concerning the procedures set forth in the revenue procedure, especially their application to partners and partnerships. One comment was received but it did not address the limitations period.

Explanation of Provisions

These proposed regulations provide rules reflecting the enactment of section 6501(c)(10) by the AJCA. They explain how to determine whether section 6501(c)(10) applies and, if so, the applicable period of limitations on assessment. As a preliminary matter, the effective date of section 6501(c)(10) limits its application to taxable years with respect to which the period of limitations on assessment was open on or after October 22, 2004 (the date the AJCA was enacted). Thus, for taxable years for which a return was due prior to October 22, 2004, an analysis under section 6501 must be conducted to determine if the period of limitations on assessment was open under the general three-year period or an exception other than section 6501(c)(10).

1. *Application of Section 6501(c)(10).*

The general rule for applying section 6501(c)(10) is set forth in §301.6501(c)–1(g)(1) of these proposed regulations. The first step in analyzing whether section 6501(c)(10) applies is to determine whether the taxpayer failed to comply with any disclosure obligation under the section 6011 disclosure rules with respect to a listed transaction (as defined in section 6707A(c)(2)) for any taxable year. The IRS and Treasury Department have issued several regulations under section 6011, some of which apply only to certain types of taxpayers. The disclosure requirements also vary among the regulations. Therefore, particular attention must be paid to the effective dates of the various section 6011 disclosure rules in order to determine whether there was a disclosure obligation.

If there was no obligation to disclose the listed transaction, or if the taxpayer complied with its disclosure obligations, then section 6501(c)(10) does not apply. If there was a disclosure obligation and a failure to disclose as required, then section 6501(c)(10) applies. Section 6501(c)(10) applies to all open years for which the taxpayer failed to disclose its participation in the transaction as required under the section 6011 disclosure rules, even if the disclosures required under section 6011 were not due in, or with a return for, the year of participation but were due in a later year when the transaction was subsequently identified as a listed transaction. If section 6501(c)(10) applies because a taxpayer failed to disclose a listed transaction and the transaction is later removed from the category of listed transactions, section 6501(c)(10) will continue to apply with respect to the tax years for which disclosure was required. If section 6501(c)(10) applies, then the period of limitations with respect to the listed transaction will remain open until at least the earlier of (1) one year after the date on which the taxpayer provides a disclosure to satisfy section 6501(c)(10)(A) (as provided in §301.6501(c)–1(g)(5) described elsewhere in this preamble), or (2) one year after the date on which a material advisor provides the IRS with information concerning the taxpayer's participation in the transaction sufficient to satisfy section 6501(c)(10)(B) (as provided in §301.6501(c)–1(g)(6) described elsewhere in this preamble). If either paragraph (g)(5) or (g)(6) is satisfied, the period of limitations on assessment will end under the circumstances described in §301.6501(c)–1(g)(2) of these proposed regulations.

Section 301.6501(c)–1(g)(2) of these proposed regulations also provides guidance on how section 6501(c)(10) interacts with the otherwise applicable period of limitations provided in the Internal Revenue Code. The proposed regulations confirm that section 6501(c)(10) does not operate to extend a limitations period that expired before the effective date of section 6501(c)(10) or before the date on which the failure to disclose occurs. In addition, a taxpayer or material advisor cannot shorten any other applicable period of limitations on assessment by following the procedures to begin the one-year period provided under section 6501(c)(10), including, but not limited to, a limitations period that has been extended by agreement under section 6501(c)(4), or the limitations period described in section 6501(c)(1) relating to a false or fraudulent return.

The terms "listed transaction," "material advisor," and "taxable year(s) to which the failure to disclose relates" are defined in §301.6501(c)–1(g)(3) of these proposed regulations by cross-reference to section 6707A and the relevant regulations under sections 6011 and 6111.

Under section 6501(c)(10), the term "listed transaction" is defined by reference to section 6707A(c)(2), which defines a listed transaction as "a reportable transaction that is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011." Although section 6707A was enacted by section 811 of the AJCA and is effective for returns and statements due after October 22, 2004, and which were not filed before that date, its definition of "listed transactions" incorporates transactions identified as listed transactions in the section 6011 disclosure rules before section 6707A was enacted. Accordingly, any transactions that were listed transactions as of October 22, 2004, under the section 6011 disclosure rules are listed transactions under section 6707A and, thus, for purposes of section 6501(c)(10). Therefore, section 6501(c)(10) applies to transactions that were identified as listed transactions prior to October 22, 2004.

The term "taxable year(s) to which the failure to disclose relates" identifies the years to which section 6501(c)(10) applies. Clarification is necessary because a taxpayer may participate in a listed transaction over multiple years, because a transaction may be identified as a listed transaction after the taxpayer enters into the transaction, and because the section 6011 disclosure rules may require disclosure in a year in which the taxpayer did not participate in the listed transaction. The term "taxable year(s) to which the failure to disclose relates" means each taxable year that the taxpayer participated (as defined by the regulations under section 6011) in a transaction that was identified as a listed transaction and for which there was no proper disclosure when required under the section 6011 disclosure rules. For these purposes, it does not matter whether the transaction was identified as a listed transaction before or after the taxpayer filed a tax return for any taxable year in which the taxpayer participated in the transaction. On occasion, the section 6011 disclosure rule may require that a disclosure be filed in a taxable year or with a tax return for a taxable year other than the taxable year in which the taxpayer participated in the listed transaction. In those circumstances, the taxable year(s) to which the failure to disclose relates is not the taxable year in which the disclosure is required to be filed, but each taxable year that the taxpayer participated in the listed transaction.

Section 301.6501(c)–1(g)(4) of these proposed regulations provides the rule for application of section 6501(c)(10) in the case of taxpayers who are partners in partnerships, shareholders in S corporations, or beneficiaries of trusts. If these taxpayers were required to disclose their participation in a listed transaction under the section 6011 disclosure rules, and failed to disclose, then the period of limitations on assessment with respect to each partner, shareholder, or beneficiary that failed to disclose will remain open under section 6501(c)(10) even if the partnership, S corporation, or trust disclosed in accordance with the section 6011 disclosure rules and even if another partner, shareholder, or beneficiary disclosed in accordance with the section 6011 disclosure rules. This rule is as adopted because the period of limitations on assessment is specific to each taxpayer. Consistent with the above rule, a failure to disclose by an entity will not cause section 6501(c)(10) to apply to all of the taxpayers who are partners, shareholders or beneficiaries of the entity.

2. *One-Year Period Under Section 6501(c)(10).*

Guidance on the events that will start the one-year period under section 6501(c)(10) is provided in §301.6501(c)–1(g)(5) and (6) of these proposed regulations.

a. *Disclosures by taxpayers of required information.*

Under section 6501(c)(10)(A), if there is a failure to disclose information related to a listed transaction as required under the section 6011 disclosure rules, the time to assess tax will end no earlier than one year after the date "the Secretary is furnished the information so required." Section 301.6501(c)–1(g)(5)(i)(A)-(C) of these proposed regulations sets forth the general procedures for how to furnish the information to the IRS. These procedures are similar to the ones required under the section 6011 disclosure rules because failure to comply with those rules triggers the application of section 6501(c)(10). Because the rules set forth in §301.6501(c)–1(g)(5)(i) generally concern annual returns, §301.6501(c)–1(g)(5)(ii) provides that the IRS may issue published guidance that prescribes alternative procedures to address particular listed transactions, if necessary, in the case of returns other than annual returns.

Section 301.6501(c)–1(g)(5)(i)(A) of these proposed regulations provides that to begin the one-year period under section 6501(c)(10)(A) taxpayers must complete Form 8886 (or successor form) in accordance with the instructions to the form and these proposed regulations and submit the completed form with a cover letter (as described in §301.6501(c)–1(g)(5)(i)(B)) to OTSA. Under the procedures set forth in Revenue Procedure 2005–26, taxpayers were required to submit the completed form and cover letter both to OTSA and the Internal Revenue Service Center where the taxpayer filed its original return in all cases and, if applicable, to an IRS examiner or Appeals officer. These proposed regulations simplify the procedures taxpayers need to follow by only requiring them to submit the information to one IRS office instead of two, unless the taxpayer also needs to submit a copy to an IRS examiner or Appeals officer, as discussed later in this Preamble.

Taxpayers must complete the most current version of the form available at the time the taxpayer attempts to satisfy section 6501(c)(10). In other words, if the Form 8886 (or successor form) changes between the date that the taxpayer was required to disclose the listed transaction under the section 6011 disclosure rules and the date that the taxpayer discloses the listed transaction for purposes of section 6501(c)(10), then the taxpayer must follow the rules in effect on the date of the section 6501(c)(10) disclosure.

The taxpayer also must indicate on the form that the disclosure is for purposes of section 6501(c)(10) and the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. The section 6501(c)(10) disclosure will only be effective for the tax return(s) and taxable year(s) that the taxpayer specifies he or she is attempting to disclose for purposes of section 6501(c)(10). Thus, for example, if a taxpayer failed to disclose the taxpayer's participation in a listed transaction in three taxable years but the taxpayer's section 6501(c)(10) disclosure only specifies one taxable year, then the period of limitations on assessment for the other two taxable years will remain open under section 6501(c)(10). If the Form 8886 (or successor form) contains a line for that purpose, then taxpayers may use that line, so long as the line is completed in accordance with the instructions to the form. If no line is provided on the form, then the taxpayer must include on the top of Page 1 of the Form 8886, and each copy of the form, the following statement: "*Section 6501(c)(10) Disclosure*" followed by the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. This information is necessary to place the IRS on notice that the taxpayer is attempting to remedy its failure to properly disclose the listed transaction and, thus, the one-year period will start to run with respect to the tax years identified. Because the IRS may have as little as one year to determine whether to conduct an examination and, if it does conduct an examination, to determine whether any additional tax is due with respect to the listed transaction, it is important that the IRS receives proper notice that the one-year period has started.

Taxpayers must submit a separate Form 8886 (or successor form) and cover letter (discussed elsewhere in this Preamble) for each listed transaction that the taxpayer did not properly disclose under the section 6011 disclosure rules. If the taxpayer participated in one listed transaction over multiple years, then the taxpayer may submit one Form 8886 (or successor form), so long as the taxpayer indicates on the Form 8886 all of the tax returns and taxable years for which the taxpayer is making a section 6501(c)(10) disclosure. If a taxpayer participated in more than one listed transaction, then the taxpayer must submit separate Forms 8886 (or successor form) for each listed transaction, unless the listed transactions are the same or substantially similar, in which case all the listed transactions may be reported on one Form 8886.

Section 301.6501(c)–1(g)(5)(i)(B) of these proposed regulations provides the requirements for the cover letter. The cover letter must identify the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. In addition, the cover letter must include the statement provided in §301.6501(c)–1(g)(5)(i)(B) signed under penalties of perjury by the taxpayer and, if applicable, by the paid preparer preparing the Form 8886. The cover letter is necessary because the Form 8886 does not currently contain a penalties-of-perjury statement or place for signature.

A special rule for taxpayers under examination or Appeals consideration by the IRS is provided in §301.6501(c)–1(g)(5)(i)(C) of these proposed regulations. If the taxpayer wants to make a section 6501(c)(10) disclosure for a taxable year or a listed transaction under examination or Appeals consideration, then, in addition to the otherwise applicable filing obligations set forth in §301.6501(c)–1(g)(5)(i)(A), the taxpayer must submit a copy of the submission made under paragraph (g)(5)(i)(A) to the IRS examiner or Appeals officer examining or considering the taxable year to which the section 6501(c)(10) disclosure relates. This rule is adopted to ensure that the IRS personnel who are considering the taxpayer's tax year(s) at issue are made aware as soon as possible that the one-year period under section 6501(c)(10) may have started to run, so that whatever action is necessary can be taken within the one-year period.

Section 301.6501(c)–1(g)(5)(i)(D) provides guidance concerning the date on which the taxpayer is considered to have furnished the information to the IRS to satisfy section 6501(c)(10)(A) and start the running of the one-year period. The one-year period under section 6501(c)(10)(A) will begin on the date that the taxpayer satisfies all the requirements set forth in §301.6501(c)–1(g)(5)(i)(A) through (C). If the required procedures are not completed on the same date, the one-year period will begin on the date that the last procedure is satisfied. For example, if a taxpayer mails a completed Form 8886 to OTSA but not to the IRS examiner or Appeals officer who is examining or considering the taxable year to which the section 6501(c)(10) disclosure relates, the one-year period under section 6501(c)(10)(A) will not begin until both events occur.

Information provided under §301.6501(c)–1(g)(5) is deemed furnished on the date the IRS receives the information. Section 7502 does not apply to the mailing of the information detailed in §301.6501(c)–1(g)(5), because the information is not required to be filed within a prescribed period or on or before a prescribed date. Taxpayers can determine the date the IRS receives the information by using a delivery service that provides a way to track delivery, such as U.S. registered or certified mail, express or priority mail, or delivery confirmation from the U.S. post office or a private delivery service that provides tracking. Moreover, documentation from the post office or private delivery service showing the date the information was delivered to the IRS, together with evidence that the envelope was properly addressed to the office to which the information was required to be sent, generally will be sufficient proof that the IRS received the information, unless the IRS can establish that it did not in fact receive the information. Separate delivery confirmation documentation should be obtained to establish receipt by OTSA and the appropriate IRS revenue agent or Appeals officer, if applicable.

b. *Disclosures by material advisors.*

Under section 6501(c)(10)(B), if a taxpayer fails to disclose information related to a listed transaction as required under the section 6011 disclosure rules, the time to assess tax will end no earlier than one year after the date "a material advisor meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer." Section 6112 requires material advisors to maintain lists of advisees and other information with respect to reportable transactions, including listed transactions, and to furnish that information to the IRS upon request. The term "material advisor" is defined in §301.6111–3(b). The IRS and Treasury Department finalized regulations under section 6112 in T.D. 9352, 2007–2 C.B. 621, (72 FR 43154) published on August 3, 2007. Section 6112 and §301.6112–1 provide guidance relating to the preparation, content, maintenance, retention, and furnishing of lists by material advisors.

Section 6501(c)(10)(B) provides that a material advisor must satisfy the requirements of section 6112 to begin the one-year period. Information provided in response to another method of inquiry, such as an Information Document Request in a section 6700 investigation, will not begin the one-year period. In addition, §301.6501(c)–1(g)(6)(i) provides that the material advisor must furnish the information described in §301.6112–1(e) with respect to the taxpayer that failed to properly disclose the listed transaction. Thus, if the material advisor furnishes the information described in §301.6112–1(e) for some, or even most, of its clients but not for a particular taxpayer that failed to properly disclose the listed transaction, then the assessment period for that taxpayer will remain open under section 6501(c)(10).

Section 301.6501(c)–1(g)(6)(ii) of these proposed regulations clarifies that the one-year period will begin once the material advisor furnishes the information in response to an IRS request under section 6112, regardless of whether the material advisor provides the information within 20 business days of the IRS's request as required by section 6708. If the material advisor furnishes the required information over the course of multiple days, the requirements of paragraph (g)(6) of this section will be deemed satisfied and the one-year period will begin on the date that the IRS is furnished the information that, together with prior information, satisfies the requirements of section 6112 and §301.6112–1 with respect to the taxpayer. The information is deemed furnished for purposes of section 6501(c)(10) on the date the material advisor is treated as satisfying the requirements of section 6112 under the rules applicable to that section.

3. *Taxes that can be Assessed under Section 6501(c)(10).*

Section 6501(c)(10) allows the IRS to assess any tax with respect to a listed transaction for the taxable year(s) to which the failure to disclose relates. Section 301.6501(c)–1(g)(7) of these proposed regulations provides that taxes with respect to the listed transaction include, but are not limited to, (1) adjustments made to the tax consequences claimed on the return, (2) adjustments to any item to the extent the item is affected by the listed transaction even if it is unrelated to the listed transaction, and (3) interest and penalties that are related to the listed transaction or the adjustments made to the tax consequences (see I.R.C. §§6601(e)(1) and 6665(a)(2)). An example of an item affected by the listed transaction but not related to the listed transaction is the threshold for the medical expense deduction under section 213 that varies if there is a change in an individual's adjusted gross income. Examples of a penalty related to the adjustments made to the tax consequences are the accuracy-related penalties under sections 6662 and 6662A. An example of a penalty related to the listed transaction is the penalty under section 6707A for failure to file the disclosure statement reporting the taxpayer's participation in the listed transaction.

4. *Examples.*

Section 301.6501(c)–1(g)(8) of these proposed regulations contains examples of the application of section 6501(c)(10) to various types of taxpayers participating in listed transactions. Additional examples illustrate the application of the one-year period under section 6501(c)(10), the coordination of section 6501(c)(10) with other limitations periods provided by the Internal Revenue Code, and tax that can be assessed with respect to a listed transaction.

Proposed Effective/Applicability Date

When adopted as final regulations, these rules will apply to taxable years with respect to which the period of limitations on assessment did not expire before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, taxpayers may rely on these proposed regulations for taxable years with respect to which the period of limitations on assessment expired before the publication of the Treasury decision. Otherwise, Rev. Proc. 2005–26 continues to apply for taxable years to which these regulations do not apply and for which the period of limitations on assessment did not expire before April 8, 2005 — the effective date of Rev. Proc. 2005–26.

Effect on Other Documents

Upon the publication of final regulations under section 6501(c)(10) in the **Federal Register**, Rev. Proc. 2005–26, 2005–1 C.B. 965, will be superseded for taxable years with respect to which the period of limitations on assessment did not expire before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). Section 6501(c)(10) applies when taxpayers fail to comply with the reporting requirements set forth in section 6011. The Treasury Department and the IRS do not know the exact number and types of taxpayers that fail to comply with those requirements. However, although the Treasury Department and the IRS are aware that many tax avoidance transactions involve pass-through entities, when pass-through entities are utilized, the entities are not ultimately liable for the tax; rather, the taxpayers subject to section 6501(c)(10) will be the individuals and corporations owning, directly or indirectly, the interests in the pass-though entities. Therefore, the Treasury Department and the IRS have determined that these proposed regulations will not affect a substantial number of small entities.

In addition, the Treasury Department and the IRS have determined that any impact on small entities resulting from these proposed regulations will not be significant. Most of the information required under these proposed regulations is already required by other regulations or forms, namely §1.6011–4, §301.6112–1, and Form 8886, "*Reportable Transaction Disclosure Statement*." The only new information required to be submitted to the IRS is a cover letter, which must contain a reference to the tax returns and taxable year(s) at issue and a statement signed under penalty of perjury. The cover letter should take minimal time and expense to prepare. Therefore, the additional requirement of the cover letter should not significantly increase the burden on taxpayers. Based on these facts, the Treasury Department and the IRS have determined that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments submitted by the public will be made available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Audra M. Dineen of the Office of the Associate Chief Counsel (Procedure and Administration).

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Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 301 is proposed to be amended as follows:

PART 301 — PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6501(c)–1 is amended by adding paragraph (g) to read as follows:

§301.6501(c)–1 Exceptions to general period of limitations on assessment and collection.

* * * * *

(g) *Listed transactions*—(1) *In general*. If a taxpayer is required to disclose a listed transaction under section 6011 and the regulations under section 6011 and does not do so in the time and manner required, then the time to assess any tax attributable to that listed transaction for the taxable year(s) to which the failure to disclose relates (as defined in paragraph (g)(3)(iii) of this section) will not expire before the earlier of one year after the date on which the taxpayer makes the disclosure described in paragraph (g)(5) of this section or one year after the date on which a material advisor makes a disclosure described in paragraph (g)(6) of this section.

(2) *Limitations period if paragraph (g)(5) or (g)(6) is satisfied.* If one of the disclosure provisions described in paragraphs (g)(5) or (g)(6) of this section is satisfied, then the tax attributable to the listed transaction may be assessed at any time before the expiration of the limitations period that would have otherwise applied under this section (determined without regard to paragraph (g)(1) of this section) or the period ending one year after the date that one of the disclosure provisions described in paragraphs (g)(5) or (g)(6) of this section was satisfied, whichever is later. If both disclosure provisions are satisfied, the one-year period will begin on the earlier of the dates on which the provisions were satisfied. Paragraph (g)(1) of this section does not apply to any period of limitations on assessment that expired before the date on which the failure to disclose the listed transaction under section 6011 occurred.

(3) *Definitions*—(i) *Listed transaction*. The term *listed transaction* means a transaction described in section 6707A(c)(2) of the Code and §1.6011–4(b)(2) of this chapter.

(ii) *Material advisor*. The term *material advisor* means a person described in section 6111(b)(1) of the Code and §301.6111–3(b) of this chapter.

(iii) *Taxable year(s) to which the failure to disclose relates*. The *taxable year(s) to which the failure to disclose relates* are each taxable year that the taxpayer participated (as defined under section 6011 and the regulations under section 6011) in a transaction that was identified as a listed transaction and the taxpayer failed to disclose the listed transaction as required under section 6011. If the taxable year in which the taxpayer participated in the listed transaction is different from the taxable year in which the taxpayer is required to disclose the listed transaction under section 6011, the taxable year(s) to which the failure to disclose relates are each taxable year that the taxpayer participated in the transaction.

(4) *Application of paragraph with respect to pass-through entities*. In the case of taxpayers who are partners in partnerships, shareholders in S corporations, or beneficiaries of trusts and are required to disclose a listed transaction under section 6011 and the regulations under section 6011, paragraph (g)(1) of this section will apply to a particular partner, shareholder, or beneficiary if that particular taxpayer does not disclose within the time and in the form and manner provided by section 6011 and §1.6011–4(d) and (e), regardless of whether the partnership, S corporation, or trust or another partner, shareholder, or beneficiary discloses in accordance with section 6011 and the regulations under section 6011. Similarly, because paragraph (g)(1) of this section applies on a taxpayer-by-taxpayer basis, the failure of a partnership, S corporation, or trust that has a disclosure obligation under section 6011 and does not disclose within the time or in the form and manner provided by §1.6011–4(d) and (e) will not

cause paragraph (g)(1) of this section to apply automatically to all the partners, shareholders or beneficiaries of the entity. Instead, the application of paragraph (g)(1) of this section will be determined based on whether the particular taxpayer satisfied their disclosure obligation under section 6011 and the regulations under section 6011.

(5) *Taxpayer's disclosure of a listed transaction that taxpayer did not properly disclose under section 6011*—(i) *In general*—(A) *Method of disclosure*. The taxpayer must complete the most current version of Form 8886, "*Reportable Transaction Disclosure Statement*" (or successor form), available on the date the taxpayer attempts to satisfy this paragraph in accordance with §1.6011–4(d) (in effect on that date) and the instructions to that form. The taxpayer must indicate on the Form 8886 that the form is being submitted for purposes of section 6501(c)(10) and the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. The section 6501(c)(10) disclosure will only be effective for the tax return(s) and taxable year(s) that the taxpayer specifies he or she is attempting to disclose for purposes of section 6501(c)(10). If the Form 8886 contains a line for this purpose then the taxpayer must complete the line in accordance with the instructions to that form. Otherwise, the taxpayer must include on the top of Page 1 of the Form 8886, and each copy of the form, the following statement: "*Section 6501(c)(10) Disclosure*" followed by the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. For example, if the taxpayer did not properly disclose its participation in a listed transaction the tax consequences of which were reflected on the taxpayer's Form 1040 for the 2005 taxable year, the taxpayer must include the following statement: "*Section 6501(c)(10) Disclosure; 2005 Form 1040*" on the form. The taxpayer must submit the properly completed Form 8886 and a cover letter, which must be completed in accordance with the requirements set forth in paragraph (g)(5)(i)(B) of this section, to the Office of Tax Shelter Analysis (OTSA). The taxpayer is permitted, but not required, to file an amended return with the Form 8886 and cover letter. Separate Forms 8886 and separate cover letters must be submitted for each listed transaction the taxpayer did not properly disclose under section 6011. If the taxpayer participated in one listed transaction over multiple years, the taxpayer may submit one Form 8886 (or successor form) and cover letter and indicate on that form all of the tax returns and taxable years for which the taxpayer is making a section 6501(c)(10) disclosure. If a taxpayer participated in more than one listed transaction, then the taxpayer must submit separate Forms 8886 (or successor form) for each listed transaction, unless the listed transactions are the same or substantially similar, in which case all the listed transactions may be reported on one Form 8886.

(B) *Cover letter*. A cover letter to which a Form 8886 is to be attached must identify the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure and include the following statement signed under penalties of perjury by the taxpayer and if the Form 8886 is prepared by a paid preparer, the Form 8886 must be signed under penalties of perjury by the paid preparer as well:

> Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

(C) *Taxpayer under examination or Appeals consideration*. A taxpayer making a disclosure under paragraph (g)(5) of this section with respect to a taxable year under examination or Appeals consideration by the IRS must satisfy the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and also submit a copy of the submission to the IRS examiner or Appeals officer examining or considering the taxable year(s) to which the disclosure under paragraph (g) of this section relates.

(D) *Date the one-year period will begin to run if paragraph (g)(5) satisfied*. Unless an earlier expiration is provided for in paragraph (g)(6) of this section, the time to assess tax under paragraph (g) of this section will not expire before one year after the date on which the Secretary is furnished the information from the taxpayer that satisfies all the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and, if applicable, paragraph (g)(5)(i)(C) of this section. If the taxpayer does not satisfy all of the requirements on the same date, the one-year period will begin on the date that the IRS is furnished the information that, together with prior disclosures of information, satisfies the requirements of paragraph (g)(5) of this section. For purposes of paragraph (g)(5) of this section, the information is deemed furnished on the date the IRS receives the information.

(ii) *Exception for returns other than annual returns*. The IRS may prescribe alternative procedures to satisfy the requirements of this paragraph (g)(5) in a revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin for circumstances involving returns other than annual returns.

(6) *Material advisor's disclosure of a listed transaction not properly disclosed by a taxpayer under section 6011*—(i) *Method of disclosure*. In response to a written request of the IRS under section 6112, a material advisor with respect to a listed transaction must furnish to the IRS the information described in section 6112 and §301.6112–1(b) in the form and manner prescribed by section 6112 and §301.6112–1(e). If the information the material advisor furnishes identifies the taxpayer as a person who engaged in the listed transaction, regardless of whether the material advisor provides the information before or after the taxpayer's failure to disclose the listed transaction under section 6011, then the requirements of this paragraph (g)(6) will be satisfied for that taxpayer. The requirements of this paragraph (g)(6) will be considered satisfied even if the material advisor furnishes the information required under section 6112 to the IRS after the date prescribed in section 6708 or published guidance relating to section 6708.

(ii) *Date the one-year period will begin if paragraph (g)(6) is satisfied*. Unless an earlier expiration is provided for in paragraph (g)(5) of this section, the time to assess tax under paragraph (g) of this section will expire one year after the date on which the material advisor satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer. For purposes of paragraph (g)(6) of this section, information is deemed to be furnished on the date that, in response to a request under section 6112, the IRS receives the information from a material advisor that satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer.

(7) *Tax assessable under this section*. If the period of limitations on assessment for a taxable year remains open under this section, the Secretary has authority to assess any tax with respect to the listed transaction in that year. This includes, but is not limited to, adjustments made to the tax consequences claimed on the return plus interest, additions to tax, additional amounts, and penalties that are related to the listed transaction or adjustments made to the tax consequences. This also includes any item to the extent the item is affected by the listed transaction even if it is unrelated to the listed transaction. An example of an item affected by, but unrelated to, a listed transaction is the threshold for the medical expense deduction under section 213 that varies if there is a change in an individual's adjusted gross income. An example of a penalty related to the listed transaction is the penalty under section 6707A for failure to file the disclosure statement reporting the taxpayer's participation in the listed transaction. Examples of penalties related to the adjustments made to the tax consequences are the accuracy-related penalties under sections 6662 and 6662A.

(8) *Examples*. The rules of paragraph (g) of this section are illustrated by the following examples:

Example 1. No requirement to disclose under section 6011. P, an individual, is a partner in a partnership that entered into a transaction in 2001 that was the same as or substantially similar to the transaction identified as a listed transaction in Notice 2000–44, 2000–2 C.B. 255. P claimed a loss from the transaction on his Form 1040 for the tax year 2001. P filed the Form 1040 prior to June 14, 2002. P did not disclose his participation in the listed transaction because P was not required to disclose the transaction under the applicable section 6011 regulations (T.D. 8961, 2001–2 C.B. 194). Although the transaction was a listed transaction and P did not disclose the transaction, P had no obligation to include on any return or statement any information with respect to a listed transaction within the meaning of section 6501(c)(10) because T.D. 8961 only applied to corporations, not individuals. Accordingly, section 6501(c)(10) does not apply.

Example 2. Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after taxpayer files a tax return for that year. (i) In January 2009, A, a calendar year taxpayer, enters into a transaction that at the time is not a listed transaction. A reports the tax consequences from the transaction on its individual income tax return for 2009 timely filed on April 15, 2010. The time for the IRS to assess tax against A under the general three-year period of limitations for A's 2009 taxable year would expire on April 15, 2013. A only participated in the transaction in 2009. On March 1, 2012, the IRS identifies the transaction as a listed transaction. A does not file the Form 8886 with OTSA by May 30, 2012.

(ii) The period of limitations on assessment for A's 2009 taxable year was open on the date the transaction was identified as a listed transaction. Under the applicable section 6011 regulations (T.D. 9350, 2007–2 C.B. 607), A must disclose its participation in the transaction by filing a completed Form 8886 with OTSA on or before May 30, 2012, which is 90 days after the date the transaction became a listed transaction. A did not disclose the transaction as required. A's failure to disclose relates to taxable year 2009 even though the obligation to disclose did not arise until 2012. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2009 taxable year with respect to the listed transaction until at least one year after the date A satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to A.

Example 3. Requirements of paragraph (g)(6) satisfied. Same facts as *Example 2*, except that on April 5, 2013, the IRS hand delivers to Advisor J, who is a material advisor, a section 6112 request related to the listed transaction. Advisor J furnishes the required list with all the information required by section 6112 and §301.6112–1, including all the information required with respect to A, to the IRS on May 13, 2013. The submission satisfies the requirements of paragraph (g)(6) even though Advisor J furnishes the information outside of the 20-business-day period provided in section 6708. Accordingly, under section 6501(c)(10), the period of limitations with respect to A's taxable year 2009 will end on May 13, 2014, one year after the IRS received the required information, unless the period of limitations remains open under another exception. Any tax for the 2009 taxable year not attributable to the listed transaction must be assessed by April 15, 2013.

Example 4. Requirements of paragraph (g)(5) also satisfied. Same facts as *Examples 2 and 3*, except that on May 23, 2013, A files a properly completed Form 8886 and signed cover letter with OTSA both identifying that the section 6501(c)(10) disclosure relates to A's Form 1040 for 2009. A satisfied the requirements of paragraph (g)(5) of this section as of May 23, 2013. Because the requirements of paragraph (g)(6) were satisfied first as described in *Example 3*, under section 6501(c)(10) the period of limitations will end on May 13, 2014 (one year after the requirements of paragraph (g)(6) were satisfied) instead of May 23, 2014 (one year after the requirements of paragraph (g)(5) were satisfied). Any tax for the 2009 taxable year not attributable to the listed transaction must be assessed by April 15, 2013.

Example 5. Period to assess tax remains open under another exception. Same facts as *Examples 2, 3, and 4*, except that on April 1, 2013, A signed Form 872, consenting to extend, without restriction, its period of limitations on assessment for taxable year 2009 under section 6501(c)(4) until July 15, 2014. In that case, although under section 6501(c)(10) the period of limitations would otherwise expire on May 13, 2014, the IRS may assess tax with respect to the listed transaction at any time up to and including July 15, 2014, pursuant to section 6501(c)(4). Section 6501(c)(10) can operate to extend the assessment period but cannot shorten any other applicable assessment period.

Example 6. Requirements of (g)(5) not satisfied. In 2009, X, a corporation, enters into a listed transaction. On March 15, 2010, X timely files its 2009 Form 1120, reporting the tax consequences from the transaction. X does not disclose the transaction as required under section 6011 when it files its 2009 return. The failure to disclose relates to taxable year 2009. On February 12, 2014, X completes and files a Form 8886 with respect to the listed transaction with OTSA but does not submit a cover letter, as required. The requirements of paragraph (g)(5) of this section have not been satisfied. Therefore, the time to assess tax against X with respect to the transaction for taxable year 2009 remains open under section 6501(c)(10).

Example 7. Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after first year of participation. (i) On December 30, 2003, Y, a corporation, enters into a transaction that at the time is not a reportable transaction. On March 15, 2004, Y timely files its 2003 Form 1120, reporting the tax consequences from the transaction. On April 1, 2004, the IRS issues Notice 2004–31 that identifies the transaction as a listed transaction. Y also reports tax consequences from the transaction on its 2004 Form 1120, which it timely filed on March 15, 2005. Y did not attach a completed Form 8886 to its 2004 Form 1120 and did not send a copy of the form to OTSA. The general three-year period of limitations on assessment for Y's 2003 and 2004 taxable years would expire on March 15, 2007, and March 17, 2008, respectively.

(ii) The period of limitations on assessment for Y's 2003 taxable year was open on the date the transaction was identified as a listed transaction. Under the applicable section 6011 regulations (T.D. 9108, 2004–1 C.B. 429), Y should have disclosed its participation in the transaction with its next filed return, which was its 2004 Form 1120, but Y did not disclose its participation. Y's failure to disclose with the 2004 Form 1120 relates to taxable years 2003 and 2004. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2003 and 2004 taxable years with respect to the listed transaction until at least one year after the date Y satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to Y.

Example 8. Section 6501(c)(10) applies to keep one partner's period of limitations on assessment open. T and S are partners in a partnership, TS, that enters into a listed transaction in 2010. T and S each receive a Schedule K–1 from TS on April 11, 2011. On April 15, 2011, TS, T and S each file their 2010 returns. Under the applicable section 6011 regulations, TS, T, and S each are required to disclose the transaction. TS attaches a completed Form 8886 to its 2010 Form 1065 and sends a copy of Form 8886 to OTSA. Neither T nor S files a disclosure statement with their respective returns nor sends a copy to OTSA on April 15, 2011. On May 17, 2011, T timely files a completed Form 8886 with OTSA pursuant to §1.6011–4(e)(1). T's disclosure is timely because T received the Schedule K–1 within 10 calendar days before the due date of the return and, thus, T had 60 calendar days to file Form 8886 with OTSA. TS and T properly disclosed the transaction in accordance with the applicable regulations under section 6011, but S did not. S's failure to disclose relates to taxable year 2010. The time to assess tax with respect to the transaction against S for 2010 remains open under section 6501(c)(10) even though TS and T disclosed the transaction.

Example 9. Section 6501(c)(10) satisfied before expiration of three-year period of limitations under section 6501(a). Same facts as *Example 8*, except that on August 27, 2012, S satisfies the requirements of paragraph (g)(5) of this section. No material advisor satisfied the requirements of paragraph (g)(6) of this section with respect to S on a date earlier than August 27, 2012. Under section 6501(c)(10), the period of time in which the IRS may assess tax against S with respect to the listed transaction would expire no earlier than August 27, 2013, one year after the date S satisfied the requirements of paragraph (g)(5). As the general three-year period of limitations on assessment under section 6501(a) does not expire until April 15, 2014, the IRS will have until that date to assess any tax with respect to the listed transaction.

Example 10. No section 6112 request. B, a calendar year taxpayer, entered into a listed transaction in 2010. B did not comply with the applicable disclosure requirements under section 6011 for taxable year 2010; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after B satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to B. In June 2011, the IRS conducts a section 6700 investigation of Advisor K, who is a material advisor to B with respect to the listed transaction. During the course of the investigation, the IRS obtains the name, address, and TIN of all of Advisor K's clients who engaged in the transaction, including B. The information provided does not satisfy the requirements of paragraph (g)(6) with respect to B because the information was not provided pursuant to a section 6112 request. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2010 remains open under section 6501(c)(10).

Example 11. Section 6112 request but the requirements of paragraph (g)(6) are not satisfied with respect to B. Same facts as *Example 10*, except that on January 2, 2014, the IRS sends by certified mail a section 6112 request to Advisor L, who is another material advisor to B with respect to the listed transaction. Advisor L furnishes some of the information required under section 6112 and §301.6112–1 to the IRS for inspection on January 13, 2014. The list includes information with respect to many clients of Advisor L, but it does not include any information with respect to B. The submission does not satisfy the requirements of paragraph (g)(6) of this section with respect to B. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2010 remains open under section 6501(c)(10).

Example 12. Section 6112 submission made before taxpayer failed to disclose a listed transaction. Advisor M, who is a material advisor, advises C, an individual, in 2010 with respect to a transaction that is not a reportable transaction at that time. C files its return claiming the tax consequences of the transaction on April 15, 2011. The time for the IRS to assess tax against C under the general three-year period of limitations for C's 2010 taxable year would expire on April 15, 2014. The IRS identifies the transaction as a listed transaction on November 1, 2013. On December 5, 2013, the IRS hand delivers to Advisor M a section 6112 request related to the transaction. Advisor M furnishes the information to the IRS on December 30, 2013. The information contains all the required information with respect to Advisor M's clients, including C. C does not disclose the transaction on or before January 30, 2014, as required under section 6011 and the regulations under section 6011. Advisor M's submission under section 6112 satisfies the requirements of paragraph (g)(6) of this section even though it occurred prior to C's failure to disclose the listed transaction. Thus, under section 6501(c)(10), the period of limitations to assess tax against C with respect to the listed transaction will end on December 30, 2014 (one year after the requirements of paragraph (g)(6) of this section were satisfied), unless the period of limitations remains open under another exception.

Example 13. Transaction removed from the category of listed transactions after taxpayer failed to disclose. D, a calendar year taxpayer, entered into a listed transaction in 2011. D did not comply with the applicable disclosure requirements under section 6011 for taxable year 2011; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after D satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to D. In 2016, the IRS removes the transaction from the category of listed transactions because of a change in law. Section 6501(c)(10) continues to apply to keep the period of limitations on assessment open for D's taxable year 2011.

Example 14. Taxes assessed with respect to the listed transaction. (i) F, an individual, enters into a listed transaction in 2009. F files its 2009 Form 1040 on April 15, 2010, but does not disclose his participation in the listed transaction in accordance with section 6011 and the regulations under section 6011. F's failure to disclose relates to taxable year 2009. Thus, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the listed transaction for taxable year 2009 until at least one year after the date F satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to F.

(ii) On July 1, 2014, the IRS completes an examination of F's 2009 taxable year and disallows the tax consequences claimed as a result of the listed transaction. The disallowance of a loss increased F's adjusted gross income. Due to the increase of F's adjusted gross income, certain credits, such as the child tax credit, and exemption deductions were disallowed or reduced because of limitations based on adjusted gross income. In addition, F now is liable for the alternative minimum tax. The examination also uncovered that F claimed two deductions on Schedule C to which F was not entitled. Under section 6501(c)(10), the IRS can timely issue a statutory notice of deficiency (and assess in due course) against F for the deficiency resulting from (1) disallowing the loss, (2) disallowing the credits and exemptions to which F was not entitled based on F's increased adjusted gross income, and (3) being liable for the alternative minimum tax. In addition, the IRS can assess any interest and applicable penalties related to those adjustments, such as the accuracy-related penalty under sections 6662 and 6662A and the penalty under section 6707A for F's failure to disclose the transaction as required under section 6011 and the regulations under section 6011. The IRS cannot, however, pursuant to section 6501(c)(10), assess the increase in tax that would result from disallowing the two deductions on F's Schedule C because those deductions are not related to, or affected by, the adjustments concerning the listed transaction.

(9) *Effective/applicability date.* The rules of this paragraph (g) apply to taxable years with respect to which the period of limitations on assessment did not expire before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. However, taxpayers may rely on the rules of this paragraph (g) for taxable years with respect to which the period of limitations on assessment expired before the date of publication of the Treasury decision. If an individual does not choose to rely on the rules of this paragraph (g), Rev. Proc. 2005–26, 2005–1 C.B. 965, will continue to apply to taxable years with respect to which the period of limitations on assessment expired on or after April 8, 2005, and before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Linda E. Stiff,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on October 6, 2009, 8:45 a.m., and published in the issue of the Federal Register for October 7, 2009, 74 F.R. 55127)

Notice of Proposed Rulemaking

Payout Requirements for Type III Supporting Organizations That Are Not Functionally Integrated

REG–155929–06

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the requirements to qualify as a Type III supporting organization that is operated in connection with one or more supported organizations. The regulations reflect changes to the law made by the Pension Protection Act of 2006. The regulations will affect Type III supporting organizations and their supported organizations.

DATES: Written or electronic comments and requests for a public hearing must be received by December 23, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–155929–06), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–155929–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG–155929–06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Philip T. Hackney or Don R. Spellmann at (202) 622–1124; concerning submissions of comments and requests for a public hearing, Richard A. Hurst at (202) 622–7180 (not toll-free numbers) or *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 23, 2009. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in Prop. Reg. §1.509(a)–4(i)(2). The collection of information flows from section 509(f)(1)(A), which requires a Type III supporting organization to provide to each of its supported organizations such information as the Secretary may require to ensure that the Type III supporting organization is responsive to the needs or demands of its supported organization(s). The likely recordkeepers are Type III supporting organizations.

Estimated total annual reporting burden: 8,400 hours.

Estimated average annual burden hours per recordkeeper: Two hours.

Estimated number of recordkeepers: 4,200.

Estimated frequency of collection of such information: Annual.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. 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 return information are confidential, as required by 26 U.S.C. 6103.

Background

An organization described in section 501(c)(3) of the Internal Revenue Code (Code) is classified as either a private foundation or a public charity. To be classified as a public charity, an organization must meet the requirements of section 509(a)(1), (2), (3), or (4). Organizations described in section 509(a)(3) are known as supporting organizations. Such organizations achieve their status by providing support to one or more organizations described in section 509(a)(1) or (2), which in this context are referred to as supported organizations.

To meet the requirements of section 509(a)(3), an organization must satisfy an organizational test, an operational test, a relationship test, and a disqualified person control test. The organizational and operational tests require that the supporting organization be organized and at all times thereafter operated exclusively for the benefit of, to perform the functions of, or to conduct the purposes of one or more supported organizations. The relationship test requires the supporting organization to establish one of three types of relationships with one or more supported organizations. Finally, the disqualified person control test requires that the supporting organization not be controlled directly or indirectly by certain disqualified persons. Although each of these tests is a necessary requirement for an organization to establish that it qualifies as a supporting organization, this notice of proposed rulemaking (NPRM) focuses primarily on the relationship test.

Three Types of Supporting Organizations

Treas. Reg. §1.509(a)–4(f)(2) provides that a supporting organization must maintain one of three types of structural or operational relationships with its supported organization(s). A supporting organization that is operated, supervised or controlled by one or more supported organizations is commonly known as a Type I supporting organization. The relationship of a Type I supporting organization with its supported organization(s) is comparable to that of a corporate parent-subsidiary relationship. A supporting organization that is supervised or controlled in connection with one or more supported organizations is commonly known as a Type II supporting organization. The relationship of a Type II supporting organization with its supported organization(s) is comparable to a corporate brother-sister relationship. A supporting organization that is operated in connection with one or more supported organizations is commonly known as a Type III supporting organization. This NPRM focuses primarily on Type III supporting organizations.

Qualification Requirements for Type III Supporting Organizations Prior to Enactment of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780 (2006)) (PPA)

Prior to the enactment of the PPA, the regulations under section 509(a)(3) generally provided that an organization is "operated in connection with" one or more supported organizations if it meets a "responsiveness test" and an "integral part test."

Responsiveness Test

Treas. Reg. §1.509(a)–4(i)(2)(i) provides that an organization meets the responsiveness test if the organization is responsive to the needs or demands of its supported organizations. Treas. Reg. §1.509(a)–4(i)(2)(ii) provides three ways that a supporting organization may demonstrate responsiveness to a supported organization: (1) the supported organization appoints or elects one or more of the officers, directors, or trustees of the supporting organization; (2) one or more members of the governing body of the supported organization serve as officers, directors, or trustees of, or hold other important offices in, the supporting organization; or (3) the officers, directors, or trustees of the supporting organization maintain a close continuous working relationship with the officers, directors, or trustees of the supported organization. In all three cases, the relationship must result in the supported organization having a significant voice in the investment policies of the supporting organization, the timing and the manner of making grants, the selection of the grant recipients of the supporting organization, and direction over the use of the income or assets of the supporting organization.

The existing regulations also provide an alternative means for charitable trusts to satisfy the responsiveness test. Under Treas. Reg. §1.509(a)–4(i)(2)(iii), a supporting organization is responsive if: (1) it is a charitable trust under State law, (2) each specified supported organization is a named beneficiary under the charitable trust's governing instrument, and (3) each beneficiary organization has the power to enforce the trust and compel an accounting under State law.

In the case of an organization that was supporting one or more supported organizations before November 20, 1970, Treas. Reg. §1.509(a)–4(i)(1)(ii) provides that additional facts and circumstances, such as a historic and continuing relationship between the supporting organization and its supported organization(s), also may be taken into account to establish compliance with the responsiveness test.

Integral Part Test

Treas. Reg. §1.509(a)–4(i)(3)(i) provides that a supporting organization meets the integral part test by maintaining a significant involvement in the operations of one or more supported organizations that are dependent upon the supporting organization for the type of support which it provides. Under the existing regulations, there are two alternative ways to meet the integral part test: (1) the "but for" test under Treas. Reg. §1.509(a)–4(i)(3)(ii); or (2) the "attentiveness" test under Treas. Reg. §1.509(a)–4(i)(3)(iii).

Treas. Reg. §1.509(a)–4(i)(3)(ii) states that the "but for" test is satisfied if "the activities engaged in [by the supporting organization] for or on behalf of the supported organizations are activities to perform the functions of, or to carry out the purposes of, such organizations, and, but for the involvement of the supporting organization, would normally be engaged in by the supported organizations themselves."

The "attentiveness" test under Treas. Reg. §1.509(a)–4(i)(3)(iii) requires a supporting organization to: (1) make payments of substantially all of its income to or for the use of one or more supported organizations, (2) provide enough support to one or more supported organizations to ensure the attentiveness of such organization(s) to the operations of the supporting organization; and (3) pay a substantial amount of the total support of the supporting organization to those supported organizations that meet the attentiveness requirement. Rev. Rul. 76–208, 1976–1 C.B. 161 (see §601.601(d)(2)(ii)(*b*)), provides that the phrase "substantially all of its income" in Treas. Reg. §1.509(a)–4(i)(3)(iii) means at least 85 percent of adjusted net income.

PPA Changes to Qualification Requirements for Type III Supporting Organizations

The PPA made five changes to the requirements an organization must meet to qualify as a Type III supporting organization:

(1) It removed the alternative test for charitable trusts as a means of meeting the responsiveness test;

(2) It required the Secretary of the Treasury to set a new payout requirement for organizations that are not functionally integrated (generally, those organizations that met the integral part test by satisfying the attentiveness test under the existing regulations) to ensure that such organizations pay a "significant amount" to their supported organizations;

(3) It provided that a Type III supporting organization must annually provide to each of its supported organizations such information as the Secretary may require to ensure that the supporting organization is responsive to the needs or demands of its supported organization(s);

(4) It prohibited a Type III supporting organization from supporting any supported organization not organized in the United States; and

(5) It prohibited a Type I or Type III supporting organization from accepting a gift or contribution from a person who, together with certain related persons, directly or indirectly controls the governing body of a supported organization of the Type I or Type III supporting organization.

Notice 2006–109

On December 18, 2006, the Treasury Department and the IRS released Notice 2006–109, 2006–2 C.B. 1121, (see §601.601(d)(2)(ii)(*b*)), which alerted taxpayers to the new supporting organization rules enacted by the PPA; provided interim guidance, including reliance standards for private foundations making grants to supporting organizations; and solicited comments regarding the new supporting organization requirements. Fifteen comments and numerous phone calls were received in response to the request for comments contained in Notice 2006–109.

Advanced Notice of Proposed Rulemaking (ANPRM)

On August 2, 2007, the Treasury Department and the IRS issued an ANPRM titled "Payout Requirements for Type III Supporting Organizations that Are Not Functionally Integrated" (Reg–155929–06, 72 FR 148). The ANPRM described proposed rules to implement the PPA changes to the Type III supporting organization requirements, and solicited comments regarding those proposed rules.

In the ANPRM, the Treasury Department and the IRS proposed that all Type III supporting organizations would be required to meet the responsiveness test under Treas. Reg. §1.509(a)–4(i)(2)(ii). In addition, the Treasury Department and the IRS proposed that Type III supporting organizations that are functionally integrated would be required to meet: (A) the "but for" test in existing Treas. Reg. §1.509(a)–4(i)(3)(ii); (B) an expenditure test resembling the section 4942(j)(3)(A) qualifying distributions test for private operating foundations; and (C) an assets test resembling the section 4942(j)(3)(B) alternative assets test for private operating foundations. However, the Treasury Department and the IRS indicated that an exception would be provided for certain Type III supporting organizations that oversee or facilitate the operation of an integrated system, such as certain hospital systems. The ANPRM stated that such organizations would be classified as functionally integrated as long as they satisfied the responsiveness and "but for" tests under the existing regulations.

The ANPRM proposal provided that a non-functionally integrated Type III supporting organization would be required to make an annual payout equal to the annual payout required from a private non-operating foundation (generally, five percent of the fair market value of non-exempt-use assets). The Treasury Department and the IRS also proposed a limitation on the number of supported organizations a non-functionally integrated Type III supporting organization could support.

The IRS received over 40 comments and numerous phone calls in response to the ANPRM. After consideration of all comments received, the Treasury Department and the IRS are issuing this NPRM regarding the new qualification requirements for Type III supporting organizations. The major areas of comment in response to the ANPRM are discussed in the preamble under Explanation of Provisions.

Explanation of Provisions

Summary of Proposed Criteria to Qualify as a Type III Supporting Organization

The proposed regulations provide that every Type III supporting organization must: (1) satisfy the notification requirement set forth under Prop. Reg. §1.509(a)–4(i)(2); (2) meet the responsiveness test set forth under Prop. Reg. §1.509(a)–4(i)(3); and (3) demonstrate that it is an integral part of one or more supported organizations. A Type III supporting organization demonstrates that it is an integral part of a supported organization by satisfying either the requirements for functionally integrated Type III supporting organizations set forth in Prop. Reg. §1.509(a)–4(i)(4), or the requirements for non-functionally integrated Type III supporting organizations set forth in Prop. Reg. §1.509(a)–4(i)(5). Further, as set forth in Prop. Reg. §1.509(a)–4(i)(10), a Type III supporting organization may not support a supported organization that is organized outside of the United States. Finally, as set forth in Prop. Reg. §1.509(a)–4(f)(5), Type I and Type III supporting organizations are prohibited from accepting a gift or contribution from a person who, together with certain related persons, directly or indirectly controls the governing body of a supported organization of the Type I or Type III supporting organization.

Requirement to Notify Supported Organizations

Prop. Reg. §1.509(a)–4(i)(2) implements section 509(f)(1)(A) of the Code, which provides that a Type III supporting organization must provide to each of its supported organizations such information as the Secretary may require to ensure that the supporting organization is responsive to the needs or demands of the supported organization.

The Treasury Department and the IRS requested comments in the ANPRM on the type of information a Type III supporting organization should be required to provide to its supported organizations. One commentator recommended that the proposed regulations adopt a recommendation of the Panel on the Nonprofit Sector, which suggested requiring Type III supporting organizations to provide annually to their supported organizations: (1) a copy of governing documents, including those filed with Form 1023, "*Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*," and any updates; (2) a copy of Form 990, "*Return of Organization Exempt From Income Tax*;" and (3) an annual report of activities, including a narrative, financial detail, and a description of the support provided (including how it was calculated or determined) and a projection of support to be provided in the subsequent year. Panel on the Nonprofit Sector, Strengthening Transparency, Governance, Accountability of Charitable Organizations (June 2005), at 45.

Another commentator recommended that the proposed regulations require only that the Form 990 be distributed to the "lead" supported organization. This commentator argued that any additional requirement would impose too much additional administrative burden and cost on the charitable sector. The comment also suggested allowing the notification to be provided electronically.

The proposed regulations require that each taxable year, a Type III supporting organization must provide to each of its supported organizations: (A) a written notice addressed to a principal officer of the supported organization identifying the supporting organization and describing the amount and type of support it provided to the supported organization in the past year; (B) a copy of the supporting organization's most recently filed Form 990; and (C) a copy of the supporting organization's governing documents, including any amendments. Copies of governing documents need only be provided once. The proposed regulations provide that the required notice and documents may be delivered by electronic media. Organizations must satisfy the notification requirement to qualify as a Type III supporting organization and should retain proof of delivery in their records.

Responsiveness Test

The proposed regulations provide that all Type III supporting organizations, including those organized as charitable trusts, must meet the responsiveness test under existing Treas. Reg. §1.509(a)–4(i)(2)(ii).

The ANPRM proposed to apply the responsiveness test to all Type III supporting organizations and to remove the special rule for charitable trusts. In response to the ANPRM, commentators argued that the PPA did not require imposition of the general responsiveness test on charitable trusts, and that the test could be difficult to satisfy because of state-law fiduciary requirements on trusts. Thus, a commentator recommended the development of an alternate charitable trust test based on facts and circumstances.

One commentator recommended exempting trusts managed by institutional trustees from the responsiveness test. The commentator stated that institutional trustees employ strict rules to manage trusts, thereby making abuse of these trusts highly unlikely. Another commentator recommended transition relief for trusts in existence on the date the PPA was enacted similar to that provided in Treas. Reg. §1.509(a)–4(i)(4) for trusts established before November 20, 1970, which would apply to a trust with a lengthy and continuous history of distributions, and no discretion to vary the beneficiaries or the amount of distributions.

The proposed regulations require that all Type III supporting organizations demonstrate the necessary relationship between its officers, directors or trustees and those of the supported organization, and show that this relationship results in the officers, directors or trustees of the supported organization having a significant voice in the operations of the supporting organization. The proposed regulations do not adopt a special rule for trusts.

The Treasury Department and the IRS believe that requiring charitable trusts to meet the responsiveness test set forth in these proposed regulations is consistent with Congress' intent in the PPA. The Treasury Department and the IRS expect that some charitable trusts will be able to demonstrate that they meet the requirements of the responsiveness test. The proposed regulations provide examples that illustrate factors that could lead to a conclusion that a supporting organization organized as a trust is responsive to the needs of a supported organization. Additionally, the Treasury Department and the IRS request comments regarding a specific responsiveness rule for trusts that would be consistent with the existing responsiveness test and the Congressional intent behind section 1241 of the PPA, which removed the alternative trust test in the regulations.

Integral Part Test — Functionally Integrated Type III Supporting Organizations

The proposed regulations provide that a Type III supporting organization is functionally integrated if it either: (1) engages in activities substantially all of which directly further the exempt purposes of the supported organization(s) to which it is responsive by performing the functions of, or carrying out the purposes of, such supported organization(s) and that, but for the involvement of the supporting organization, would normally be engaged in by the supported organization(s); or (2) is the parent of each of its supported organizations.

The ANPRM proposed requiring an organization to meet not only the "but for" test under existing Treas. Reg. §1.509(a)–4(i)(3)(ii), but also two additional tests — an expenditure test and an assets test — in order to qualify as a functionally integrated Type III supporting organization. In general, commentators said that the additional tests were unduly restrictive and more burdensome than those proposed for non-functionally integrated Type III supporting organizations. These commentators argued that the ANPRM's expenditure test was arbitrary and that Congress did not authorize the Secretary to impose a payout requirement on functionally integrated organizations. Many commentators highlighted differences between a Type III supporting organization and a private operating foundation that warrant treating these types of organizations differently, including the fact that a supporting organization is dedicated to specific organizations and that those specified organizations rely on the supporting organization for consistent support.

Many commentators recommended exempting certain types of organizations from the proposed requirements for functionally integrated Type III supporting organizations, such as long-standing supporting organizations and supporting organizations that support governmental agencies, religious organizations, and grant-making organizations. Several commentators recommended that the proposed regulations take into account the historic and continuing relationship of "long-standing" organizations with their supported organizations. Additionally, many commentators requested an exemption for supporting organizations of governmental entities, contending that these organizations are not subject to abuse because of their connection to a governmental entity. These commentators argued that supporting organizations choose a Type III structure to ensure that funds are dedicated long-term to a specific purpose, and removed from the appropriation process of the government.

In formulating the criteria in the proposed regulations, the Treasury Department and the IRS also noted the suggestion in the Joint Committee on Taxation's Technical Explanation of the PPA that "substantially all of the activities of [a functionally integrated Type III supporting organization] should be activities in direct furtherance of the functions or purposes of supported organizations." Staff of the Joint Committee on Taxation, Technical Explanation of H.R. 4, The "Pension Protection Act of 2006" (Aug. 3, 2006), at 360 n.571 (Technical Explanation). In the Technical Explanation, the Joint Committee on Taxation also expressed concern that "the current regulatory standards for satisfying the integral part test not by reason of a payout are not sufficiently stringent to ensure that there is a sufficient nexus between the supporting and supported organizations." Technical Explanation at 360 n.571.

The Treasury Department and the IRS believe that a sufficient nexus exists between a supporting organization and its supported organization(s) where the supporting organization engages in activities that directly further the exempt purposes of the supported organization(s) and that would otherwise be conducted by the supported organization itself. Accordingly, the proposed regulations provide that a Type III supporting organization is functionally integrated if it either: (1) engages in activities (a) substantially all of which directly further the exempt purposes of the supported organization(s) to which it is responsive by performing the functions of, or carrying out the purposes of, such supported organization(s) and (b) that, but for the involvement of the supporting organization, would normally be engaged in by the supported organization(s); or (2) is the parent of each of its supported organizations. The Treasury Department and the IRS request comments on how guidance might clarify the application of the "substantially all" test in this context. The proposed regulations do not adopt the expenditure test and the assets test described in the ANPRM.

The proposed regulations provide that a supporting organization directly furthers the exempt purposes of its supported organization by holding or managing exempt-use assets but does not directly further such exempt purposes by fundraising, grantmaking, or investing and managing non-exempt-use assets. The Treasury Department and the IRS believe that fundraising, grantmaking, and investing and managing non-exempt-use assets do not alone establish a sufficient nexus between a supporting organization and its supported organization. Further, the Treasury Department and the IRS believe that an organization that does not engage in activities that directly further a exempt purpose will achieve a sufficient nexus with its supported organization(s) only if it distributes a significant amount to its supported organizations, as Congress directed in the PPA.

The Treasury Department and the IRS recognize the unique circumstances of a governmental entity whose assets are subject to the appropriations process of a federal, state, local or Indian tribal government and that therefore organizes a Type III supporting organization to remove assets from the appropriations process of the government. The proposed regulations therefore provide an exception under which a supporting organization that supports a single governmental entity may treat investing and managing non-exempt-use assets as activities that directly further an exempt purpose, so long as a substantial part of the supporting organization's total activities directly furthers the exempt purposes of such governmental entity.

The proposed regulations specifically require that a functionally integrated Type III supporting organization's activities directly further the exempt purposes of those supported organizations with respect to which the supporting organization meets the responsiveness test under Prop. Reg. §1.509(a)–4(i)(3). The Treasury Department and the IRS request comments on this requirement.

The proposed regulations provide that a supporting organization will be treated as the parent of a supported organization if the supporting organization exercises a substantial degree of direction over the policies, programs, and activities of the supported organization, and the majority of the officers, directors, or trustees of the supported organization is appointed or elected, directly or indirectly, by the governing body, members of the governing body, or officers of the supporting organization acting in their official capacity. Thus, the supporting organization could qualify as a parent of a second-tier (or lower) subsidiary. The classification of a parent supporting organization as functionally integrated is intended to apply to supporting organizations that oversee or facilitate the operation of an integrated system, such as hospital systems.

The proposed regulations provide examples that illustrate the requirements for functionally integrated Type III supporting organizations.

Integral Part Test-Non-Functionally Integrated Type III Supporting Organizations

The proposed regulations provide that a Type III supporting organization is non-functionally integrated if it satisfies a distribution requirement equal to five percent of the fair market value of non-exempt-use assets and an attentiveness requirement.

Section 1241(d)(1) of the PPA directed the Secretary of the Treasury to promulgate new regulations on a payout requirement for non-functionally integrated Type III supporting organizations, based on income or assets, in order to ensure that these supporting organizations pay a significant amount to their supported organizations. The ANPRM proposal required an annual payout of five percent of the fair market value of non-exempt-use assets. Many commentators said that this payout rate was too high and would erode an organization's assets over time. The commentators said that a Type III supporting organization provides long-term consistent support to specific organizations, while private foundations may pay out to whomever they choose. Further, a supporting organization maintains a governance relationship with its supported organization(s) in a way that a private foundation does not. Commentators argued that because of these differences, the private foundation payout requirement should not be imposed on a supporting organization. Imposing a five percent payout, these commentators contend, would jeopardize the ability of supporting organizations to provide the kind of consistent, reliable, long-term support supported organizations have come to expect.

Commentators suggested a number of alternative payout rates. Many of them also recommended allowing an averaging of assets over a period of years for purposes of calculating the payout amount.

The ANPRM proposed to limit the number of organizations a non-functionally integrated Type III supporting organization can support to no more than five. The ANPRM further provided that Type III supporting organizations in existence before the date regulations are proposed may support more than five organizations, as long as the supporting organization pays 85 percent of its support to organizations to which the supporting organization is responsive.

Many commentators asked that the proposed regulations not include the limitation on the number of supported organizations a non-functionally integrated Type III supporting organization can support, arguing that such a rule is arbitrary. In particular, commentators pointed out that the original Senate bill associated with supporting organizations, contained in the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (120 Stat. 345 (2005)), limited the number of organizations a supporting organization could support to five, but that Congress ultimately did not enact such a limitation.

One commentator suggested that the proposed regulations adopt a rule that one-third of a non-functionally integrated

Type III supporting organization's required distribution must go to a supported organization that is attentive to the supporting organization and to which the supporting organization is responsive.

Commentators recommended providing a transition period for the payout requirement to allow organizations sufficient time either to modify governing instruments or to sell assets.

A number of commentators suggested that the proposed regulations exempt Type III supporting organizations that (1) have no continuing involvement of donors or their family in the governance of the organization; and (2) before the date of enactment of PPA, had distributed to or for the benefit of its supported organizations an amount equal to or greater than the amounts transferred to the organization for which charitable deductions were allowed.

Under the proposed regulations, to qualify as a non-functionally integrated Type III supporting organization, an organization must meet a distribution requirement and an attentiveness requirement. The proposed regulations set the distribution requirement for non-functionally integrated Type III supporting organizations at five percent of non-exempt-use assets, and retain the concept of attentiveness that is in the current regulations. The proposed regulations do not adopt the five organization limit described in the ANPRM.

Distribution Requirement

To satisfy the distribution requirement of Prop. Reg. §1.509(a)–4(i)(5)(ii), a Type III supporting organization that is not functionally integrated must distribute, with respect to each taxable year, to or for the use of its supported organizations, amounts equaling or exceeding five percent of the aggregate fair market value of its non-exempt-use assets (the annual distributable amount), on or before the last day of such taxable year. The annual distributable amount is determined based on asset values measured over the preceding taxable year. Thus, for example, a Type III supporting organization that is not functionally integrated would determine its annual distributable amount for its 2012 taxable year, which must be distributed on or before the last day of the organization's 2012 taxable year, based on asset values measured over its 2011 taxable year. A Type III supporting organization that is not functionally integrated is not required to distribute any amount in its first year of existence.

The proposed regulations generally draw from the regulations under section 4942 for principles on valuation, timing, and carryovers. However, the proposed regulations do not permit set-asides, which count towards a private foundation's distribution requirement under section 4942(g)(2). While Congress statutorily provided that set-asides constitute qualifying distributions for private foundations, Congress made no such statutory provision for supporting organizations. Rather, in the PPA, it directed that a payout requirement be implemented for non-functionally integrated Type III supporting organizations that would result in a prompt, robust flow of support to supported organizations. The Treasury Department and the IRS request comments on whether set-asides are necessary and consistent with Congressional intent in determining whether Type III supporting organizations that are not functionally integrated have distributed their annual distributable amount.

The proposed regulations also provide a slightly different rule regarding the carryover of excess distributions than is applicable to private foundations. Under section 4942(i), a private foundation that distributes more than its distributable amount may carry forward that excess amount for five years. However, when calculating qualifying distributions in a future year under section 4942, amounts paid out in the future year count first towards the required distributable amount, and any amount carried forward is not "used" in the future year to the extent that the organization made qualifying distributions in that future year. These proposed regulations reverse the ordering rule and first count any excess amount carried forward toward the non-functionally integrated Type III supporting organization's annual distributable amount, followed by amounts paid out in the later year.

The proposed regulations provide a reasonable cause exception for failure to meet the distribution requirement applicable to non-functionally integrated Type III supporting organizations. Under the exception, an organization that fails to meet the distribution requirement will not be classified as a private foundation in the taxable year for which it fails to meet such distribution requirement, if the organization establishes to the satisfaction of the Secretary that: (1) the failure was due solely to an incorrect valuation of assets, a ministerial error, or unforeseen events or circumstances that are beyond the organization's control; (2) the failure was due to reasonable cause and not to willful neglect; and (3) the distribution requirement is met within 180 days after the date the incorrect valuation or ministerial error was or should have been discovered, or 180 days after the organization is first able to make its required payout notwithstanding the unforeseen event or circumstances. The reasonable cause exception applies only to the distribution requirement of Prop. Reg. §1.509(a)–4(i)(5)(ii), and not to the attentiveness requirement of Prop. Reg. §1.509(a)–4(i)(5)(iii). The Treasury Department and the IRS request comments regarding the reasonable cause exception for the distribution requirement.

The proposed regulations also provide for an emergency temporary reduction in the annual distributable amount. Under Prop. Reg. §1.509(a)–4(i)(5)(ii)(D), the Secretary may provide by publication in the Internal Revenue Bulletin for a temporary reduction in the annual distributable amount in the case of a disaster or emergency.

The Treasury Department and the IRS are aware that some supporting organizations impacted by the distribution requirement contained in these proposed regulations may be heavily invested in assets that are not readily marketable. The Treasury Department and the IRS request comments regarding the need for a transition rule for non-functionally integrated Type III supporting organizations whose assets, as of the effective date of these regulations, consist predominantly (in any event more than one-half) of assets that are not readily marketable.

Attentiveness Requirement

These proposed regulations modify the attentiveness requirement in existing Treas. Reg. §1.509(a)–4(i)(3)(iii) to provide that an organization must distribute one-third or more of its annual distributable amount to one or more supported organizations that are attentive to the supporting organization and with respect to which the supporting organization meets the responsiveness test under Prop. Reg. §1.509(a)–4(i)(3).

The proposed regulations provide that to demonstrate that a supported organization is attentive, a supporting organization must either: (1) provide 10 percent or more of the supported organization's total support; (2) provide support that is necessary to avoid the interruption of the carrying on of a particular function or activity of the supported organization; or (3) provide an amount of support that based on all the facts and circumstances is a sufficient part of a supported organization's total support.

Consequences of Failure to Meet Requirements

A Type III supporting organization that fails to meet the requirements of these proposed regulations, once they are published as final or temporary regulations, will be classified as a private foundation. Once classified as a private foundation, the section 507 rules regarding termination of private foundation status apply. The Treasury Department and the IRS request comments on whether exceptions or special rules under section 507 are needed for Type III supporting organizations that are reclassified as private foundations as a result of the changes in the PPA.

Transition and Other Relief Provisions

Responsiveness Test

The proposed regulations continue to provide that additional facts and circumstances, such as a historic and continuing relationship with a supported organization, may be taken into account in establishing compliance with the responsiveness test for organizations that were operating prior to November 20, 1970.

Integral Part Test

The proposed regulations provide a transition rule for Type III supporting organizations in existence on the date these regulations are published in the **Federal Register** as final or temporary regulations. Under the transition rule, such organizations that met and continue to meet the requirements of existing Treas. Reg. §1.509(a)–4(i)(3)(ii) (*i.e.*, an organization that meets the integral part test by satisfying the "but for" test) will be treated as meeting the requirements of a functionally integrated Type III supporting organization set forth in Prop. Reg. §1.509(a)–4(i)(4) until the first day of the organization's first taxable year beginning after the date these proposed regulations are published as final or temporary regulations.

The proposed regulations also provide that Type III supporting organizations in existence on the date these regulations are published in the **Federal Register** as final or temporary regulations that met and continue to meet the requirements of existing Treas. Reg. §1.509(a)–4(i)(3)(iii) will be treated as meeting the requirements of a non-functionally integrated Type III supporting organization set forth in Prop. Reg. §1.509(a)–4(i)(5) until the first day of the organization's second taxable year beginning after the date these proposed regulations are published as final or temporary regulations. Such organizations will be required to value their assets in accordance with Prop. Reg. §1.509(a)–4(i)(8) in the first taxable year beginning after final or temporary regulations are published, and to meet all of the requirements of Prop. Reg. §1.509(a)–4(i)(5)(i) in the second taxable year beginning after the publication of these regulations as final or temporary regulations and for all succeeding taxable years.

For example, if the Treasury Department and the IRS publish these regulations as final or temporary regulations any time in 2010, a calendar-year non-functionally integrated Type III supporting organization must: (1) in 2010, meet all of the requirements of existing Treas. Reg. §1.509(a)–4(i)(3)(iii) (*i.e.*, distribute to its supported organizations substantially all of its income in accord with the existing regulations); (2) in 2011, meet all of the requirements of current Treas. Reg. §1.509(a)–4(i)(3)(iii) and value its assets according to Prop. Reg. §1.509(a)–4(i)(8); and (3) in 2012, meet all of the requirements of Prop. Reg. §1.509(a)–4(i)(5)(i), including the distribution requirement.

The proposed regulations also retain the exception from the integral part test for pre-November 20, 1970 trusts that meet certain other requirements found in current Treas. Reg. §1.509(a)–4(i)(4).

The Treasury Department and the IRS request comments on whether additional transition relief is needed.

The proposed regulations eliminate current Treas. Reg. §1.509(a)–4(i)(1)(iii), which provides an exception from the integral part test if an organization can establish that: (1) it met the payout requirement under current Treas. Reg. §1.509(a)–4(i)(3)(iii)(a) for any five-year period; (2) it cannot meet such payout requirement for its current taxable year solely because the amount received by one or more of the supported organizations is no longer sufficient to satisfy the attentiveness requirement; and (3) there has been a historic and continuing relationship of support between such organizations between the end of the five-year period and the taxable year in question. The Treasury Department and the IRS believe that the breadth of this exception is inconsistent with Congress' intent in mandating a payout requirement in the PPA.

Regulations under Section 4943

This NPRM also includes proposed regulations under section 4943 that provide two transition rules to address excess business holdings for Type III supporting organizations affected by the PPA. The PPA applied the section 4943 excess business holdings excise tax to non-functionally integrated Type III supporting organizations. However, it provided that in calculating the "present holdings" of Type III supporting organizations in existence on August 17, 2006 (the date of enactment of the PPA), the transition rules that applied to private foundations in 1969, when section 4943 was first enacted, would apply. These transition rules effectively allow affected organizations additional time to dispose of certain business holdings.

The proposed regulations provide transition relief to a private foundation that qualified as a Type III supporting organization under section 509(a)(3) immediately before August 17, 2006, and that was reclassified as a private foundation under section 509(a) on or after August 17, 2006, solely as a result of the rules enacted by Section 1241 of the PPA. Thus, under the proposed regulations, the present holdings of such private foundations will be determined using the same rules that apply to Type III supporting organizations under section 4943(f)(7).

In addition, the Treasury Department and the IRS believe that pre-November 20, 1970 trusts that are exempted from the integral part test under current regulations and these proposed regulations should not be subject to the excess business holdings excise tax that applies to non-functionally integrated Type III supporting organizations. Therefore, the proposed regulations under section 4943 provide that a Type III supporting organization created as a trust before November 20, 1970, that meets the requirements of current Treas. Reg. §1.509(a)–4(i)(4) and Prop. Reg. §1.509(a)–4(i)(9), will be treated as a "functionally integrated Type III supporting organization" for purposes of section 4943(f)(3)(A).

Reliance on Prior Guidance

In Notice 2006–109, the Treasury Department and the IRS provided guidance to private foundations regarding determinations of the public charity status of a section 501(c)(3) organization when making grants. In particular, because a grant to a non-functionally integrated Type III supporting organization is not considered a qualifying distribution under section 4942, and is considered a taxable expenditure unless expenditure responsibility is exercised under section 4945, the notice provided criteria for determining whether a Type III supporting organization is functionally integrated and allowed private foundations to rely on those criteria for purposes of sections 4942 and 4945. Commentators to the ANPRM requested that the Treasury Department and the IRS permit private foundations to continue to rely on the guidance in Notice 2006–109 on private foundation grantmaking until the IRS issues determination letters addressing functionally integrated status.

Private foundations can continue to rely on the grantor reliance standards of section 3.0 of Notice 2006–109 until these proposed regulations are published as final or temporary regulations.

In addition, the IRS stated in a September 24, 2007 memorandum from the Director of Exempt Organizations Rulings and Agreements that it would issue functionally integrated Type III supporting organization determinations to organizations that meet the requirements for functionally integrated organizations set forth in the ANPRM. As of the date of the publication in the **Federal Register** of this notice of proposed rulemaking, the IRS will issue a functionally integrated Type III supporting organization determination only to organizations that meet the requirements of Prop. Reg. §1.509(a)–4(i)(4). An organization that received a determination that it qualified as a functionally integrated Type III supporting organization under the ANPRM can continue to rely on such determination letter until final or temporary regulations are published in the **Federal Register**, so long as the organization continues to meet the requirements of either the ANPRM or Prop. Reg. §1.509(a)–4(i)(4). An organization that receives a determination that it is a functionally integrated Type III supporting organization under either the ANPRM or these proposed regulations will be required to meet the requirements established in final or temporary regulations as of the first taxable year beginning after final or temporary regulations are published in the **Federal Register**.

Effective Date

The proposed regulations will apply to taxable years beginning after the date these rules are published in the **Federal Register** as final or temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this regulation will not impact a substantial number of small entities. Based on IRS Statistics of Income data for 2005, there are over 1.4 million organizations that qualify as exempt from federal income tax under section 501(c)(3). Approximately 13,000 of the 1.4 million exempt organizations reported as supporting organizations; approximately 4,200 supporting organizations reported as Type III supporting organizations; and it is expected that some fraction of the 4,200 Type III supporting organizations may be classified as non-functionally integrated Type III supporting organizations. Thus, the number of organizations affected by this regulation will not be substantial. The collection of information in this regulation that is subject to the Regulatory Flexibility Act will impose a minimal burden upon the affected organizations. All of the information required to be delivered is information that the organization is already required to maintain. Further, the distribution requirement in Prop. Reg. §1.509(a)–4(i)(5)(ii) for non-functionally integrated Type III supporting organizations does not have a significant economic impact. A non-functionally integrated Type III supporting organization that fails to satisfy the distribution requirement of Prop. Reg. §1.509(a)–4(i)(5)(ii) would be reclassified as a private non-operating foundation and as such, would be required under section 4942 to distribute amounts equal to five percent of the aggregate fair market value of non-exempt-use assets. In addition, as a private non-operating foundation, the organization would be subject to additional regulatory requirements and excise taxes that do not apply to non-functionally integrated Type III supporting organizations. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Request for Comments

Before these proposed regulations are adopted as final or temporary regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Philip T. Hackney and Don R. Spellmann, Office of the Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 53 are proposed to be amended as follows:

Part 1—Income Taxes

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

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

Par. 2. Section 1.509(a)–4 is amended by:

1. The term "publicly supported organization" is removed and replaced by the term "supported organization" wherever it appears.

2. Paragraphs (a)(5) and (i) are revised.

3. New paragraphs (a)(6) and (f)(5) are added.

The revisions and additions read as follows:

§1.509(a)–4 Supporting organizations.

(a) * * *

(5) For purposes of this section, the term "supporting organization" means either an organization described in section 509(a)(3) or an organization seeking section 509(a)(3) status, depending upon its context.

(6) For purposes of this section, the term "supported organization" means an organization described in section 509(a)(1) or (2)—

(i) For whose benefit the supporting organization is organized and operated, or

(ii) With respect to which the supporting organization performs the functions, or carries out the purposes.

* * * * *

(f) * * *

(5) *Organizations controlled by donors.* An organization shall not be considered to be operated, supervised, or controlled by, or operated in connection with, one or more supported organizations, if such organization accepts any gift or contribution from any person (other than an organization described in section 509(a)(1), (2) or (4)) who—

(i) Directly or indirectly controls, either alone or together with persons described in paragraph (f)(5)(ii) or (iii) of this section, a supported organization supported by such supporting organization;

(ii) Is a member of the family (determined under section 4958(f)(4)) of an individual described in paragraph (f)(5)(i) of this section; or

(iii) Is a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting "persons described in paragraph (f)(5)(i) or (ii) of this section" for "persons described in subparagraph (A) or (B) of paragraph (1)" in paragraph (A)(i) thereof).

* * * * *

(i) *Meaning of "operated in connection with"*—(1) *General Rule.* Except as otherwise provided in paragraphs (f)(5) and (i)(10) of this section, a supporting organization is operated in connection with one or more supported organizations only if it satisfies—

(i) The notification requirement in paragraph (i)(2) of this section;

(ii) The responsiveness test, which is set forth in paragraph (i)(3) of this section; and

(iii) The integral part test, which is set forth in paragraphs (i)(4) and (i)(5) of this section. An organization is an integral part of a supported organization if it is significantly involved in the operations of the supported organization and the supported organization is dependent upon the supporting organization for the type of support the supporting organization provides. An organization can demonstrate that it is an integral part of a supported organization only if it satisfies either the requirements for functionally integrated Type III supporting organizations set forth in paragraph (i)(4) of this section or the requirements for non-functionally integrated Type III supporting organizations set forth in paragraph (i)(5) of this section.

(2) *Notification requirement.* Each taxable year, the supporting organization must provide to each of its supported organizations—

(i) A written notice addressed to a principal officer of the supported organization indicating the type and amount of support provided by the supporting organization to the supported organization in the past year;

(ii) A copy of the supporting organization's most recently filed Form 990, "*Return of Organization Exempt From Income Tax*," or other return required to be filed under section 6033; and

(iii) A copy of the supporting organization's governing documents, including its charter or trust instrument and bylaws, and any amendments to such documents. Copies of governing documents need not be provided in a given year if such documents have previously been provided and have not subsequently been amended.

(iv) *Electronic media.* Notification may be provided by electronic media.

(v) *Due date.* The required notifications shall be postmarked or electronically transmitted by the last day of the 5^{th} month after the close of the supporting organization's tax year.

(3) *Responsiveness test.* (i) A supporting organization meets the responsiveness test if it is responsive to the needs or demands of a supported organization. Except as provided in paragraph (i)(3)(v) of this section, a supporting organization is responsive to the needs or demands of a supported organization if it satisfies the requirements of paragraphs (i)(3)(ii) and (i)(3)(iii) of this section.

(ii) A supporting organization satisfies the requirements of this paragraph (i)(3)(ii) if:

(A) One or more officers, directors, or trustees of the supporting organization are elected or appointed by the officers, directors, trustees, or membership of the supported organization;

(B) One or more members of the governing bodies of the supported organization are also officers, directors, or trustees of, or hold other important offices in, the supporting organization; or

(C) The officers, directors, or trustees of the supporting organization maintain a close and continuous working relationship with the officers, directors, or trustees of the supported organization.

(iii) By reason of paragraphs (i)(3)(ii)(A), (i)(3)(ii)(B), or (i)(3)(ii)(C) of this section, the officers, directors or trustees of the supported organization have a significant voice in the investment policies of the supporting organization, the timing of grants, the manner of making them, and the selection of recipients by such supporting organization, and in otherwise directing the use of the income or assets of such supporting organization.

(iv) *Examples*. The provisions of this paragraph (i)(3) may be illustrated by the following examples:

Example (1). X, an organization described in section 501(c)(3), is a trust created under the last will and testament of Decedent. The trustee of X is a bank (Trustee). Under the trust instrument, X supports M, a private university described in section 509(a)(1). The trust instrument provides that Trustee has discretion regarding the timing and amount of distributions consistent with the Trustee's fiduciary duties. Representatives of Trustee and an officer of M have quarterly face to face meetings, at which they discuss M's projected needs for the university and ways in which M would like X to use its income and invest its assets. Additionally, Trustee communicates regularly with the officer of M regarding X's investments and plans for distributions from X. Trustee provides the officer of M with quarterly investment statements, the information required under paragraph (i)(2) of this section, and an annual accounting statement. Based on these facts, X meets the responsiveness test of this paragraph (i)(3).

Example (2). Y is an organization described in section 501(c)(3) and is organized as a trust under state law. The trustee of Y is a bank, Trustee. Y supports charities P, Q and R, each an organization described in section 509(a)(1). Y makes annual cash payments to P, Q and R. Once a year, Trustee sends to P, Q, and R the cash payment, the information required under paragraph (i)(2) of this section, and an accounting statement. Trustee has no other communication with P, Q or R. Y does not meet the responsiveness test of this paragraph (i)(3).

(v) *Exception for Pre-November 20, 1970 Organizations*. In the case of a supporting organization that was supporting or benefiting a supported organization before November 20, 1970, additional facts and circumstances, such as a historic and continuing relationship between the organizations, may be taken into account, in addition to the factors described in paragraph (i)(3)(ii) of this section, to establish compliance with the responsiveness test.

(4) *Integral part test — functionally integrated Type III supporting organization*—(i) *General rule*. A supporting organization meets the integral part test as a functionally integrated Type III supporting organization if it satisfies either paragraph (i)(4)(i)(A) or paragraph (i)(4)(i)(B) of this section.

(A) The supporting organization engages in activities:

(*1*) substantially all of which directly further the exempt purposes of the supported organization(s) to which the supporting organization is responsive, by performing the functions of, or carrying out the purposes of, such supported organization(s); and

(*2*) that, but for the involvement of the supporting organization, would normally be engaged in by the supported organization(s).

(B) The supporting organization is the parent of each of its supported organizations. For purposes of the integral part test, a supporting organization is the parent of a supported organization if the supporting organization exercises a substantial degree of direction over the policies, programs, and activities of the supported organization and a majority of the officers, directors, or trustees of the supported organization is appointed or elected, directly or indirectly, by the governing body, members of the governing body, or officers (acting in their official capacity) of the supporting organization.

(ii) "*Directly further*." Holding title to exempt-use property and managing exempt-use property are activities that directly further the exempt purposes of the supported organization within the meaning of paragraph (i)(4)(i)(A) of this section. Except as provided in paragraph (i)(4)(iii) of this section, fundraising, investing and managing non-exempt-use property, and making grants (whether to the supported organization or to third parties) are not activities that directly further the exempt purposes of the supported organization within the meaning of paragraph (i)(4)(i)(A) of this section.

(iii) *Governmental Entity Exception*. A supporting organization may treat the investment and management of non-exempt-use assets and the making of grants directly to a supported organization as activities that directly further the exempt purposes of a supported organization if:

(A) Such activities are conducted on behalf of a supported organization whose assets are subject to the appropriation process of a federal, state, local or Indian tribal government for purposes or programs unrelated to the exempt purposes of the supported organization;

(B) The supporting organization supports only one supported organization; and

(C) A substantial part of the supporting organization's total activities directly furthers the exempt purpose(s) of its supported organization and are activities other than fundraising, grantmaking, and investing and managing non-exempt-use assets.

(iv) *Examples*. The provisions of this paragraph (i)(4) may be illustrated by the following examples. In each *example*, the supporting organization meets the requirements of paragraphs (i)(2) and (i)(3) of this section.

Example 1. N, an organization described in section 501(c)(3), is the parent organization of a healthcare system consisting of two hospitals (Q and R) and an outpatient clinic (S), each of which is described in section 509(a)(1), and a taxable subsidiary (T). N is the sole member of each of Q, R, and S. Under the charter and bylaws of each of Q, R, and S, N appoints all members of the board of directors of each corporation. N engages in the overall coordination and supervision of the healthcare system's exempt subsidiary corporations Q, R, and S in approval of their budgets, strategic planning, marketing, resource allocation, securing tax-exempt bond financing, and community education. N also manages and invests assets that serve as endowments of Q, R and S. Based on these facts, N qualifies as a functionally integrated Type III supporting organization under paragraph (4)(i)(B) of this section.

Example 2. V, an organization described in section 501(c)(3), is organized as a supporting organization to L, a church described in section 509(a)(1). L transferred to V title to the buildings in which L conducts religious services, Bible study and community enrichment programs. Substantially all of V's activities consist of holding and managing these buildings. But for the activities of V, L would normally engage in these same activities. Based on these facts, V satisfies the activities and but for requirements of paragraph (4)(i)(A) of this section and therefore qualifies as a functionally integrated Type III supporting organization.

Example 3. O is a nonprofit publishing organization described in section 501(c)(3). It does all of the publishing and printing for the eight churches of a particular denomination located in a particular geographic region, each of which is described in section 509(a)(1). Control of O is vested in a five-man Board of Directors, which includes an official from one of the churches and four lay members of the congregations of that denomination. The officers of O maintain a close and continuing working relationship with each of the eight churches for whom it publishes and prints materials and as a result of such relationship, each of the eight churches has a significant voice in the operations of O. O does no other printing or publishing. O publishes all of the churches' religious as well as secular tracts and materials. All of O's activities directly further the exempt purposes of supported organizations to which it is responsive. Additionally, but for the activities of O, the churches would normally publish these materials themselves. Based on these facts, O qualifies as a functionally integrated Type III supporting organization under paragraph (4)(i)(A) of this section.

Example 4. M, an organization described in section 501(c)(3), was created by B, an individual, to provide scholarships for students of a private secondary school, U, an organization described in section 509(a)(1). U establishes the scholarship criteria, publicizes the scholarship program, solicits and reviews applications, and selects the scholarship recipients. M invests its assets and disburses the funds for scholarships to the recipients selected by U. Based on these facts, M is not a functionally integrated Type III supporting organization.

Example 5. J, an organization described in section 501(c)(3), is a supporting organization to community foundation G, an organization described in section 509(a)(1). In addition to maintaining field-of-interest funds, sponsoring donor advised funds, and general grant-making activities, G also engages in activities to beautify and maintain local parks. J's activities consist of maintaining all of the local parks in the area of community foundation G by activities such as establishing and maintaining trails, planting trees and removing trash. But for the activities of J, G would normally engage in these efforts to beautify and maintain the local parks. Based on these facts, J qualifies as a functionally integrated Type III supporting organization under paragraph (4)(i)(A) of this section.

Example 6. W, an organization described in section 501(c)(3), is organized as a supporting organization to Z, a public university in state D described in section 509(a)(1). Z is the sole named supported organization in W's articles of incorporation. Under the laws of state D, assets under Z's control are subject to the appropriation process for any state D purpose by an action of the state D legislature. Z transfers the intellectual property developed by Z's science department to W for patenting and licensing, including making the property available to the public. The royalties generated by the licenses are shared among Z, the original researcher, and W. W invests and manages its share of the royalties and other income generated by the patenting and licensing of the intellectual property to build an endowment to support Z. W also conducts further research on scientific processes developed at Z and makes the results of this research available to the public. W's research activities make up a substantial part of W's total activities. But for the activities of W, Z would normally conduct the research engaged in by W and manage the royalties from the intellectual property generated at Z. W's activities of investing and managing its share of royalties and other income are not considered activities that directly further the exempt purposes of Z under paragraph (i)(4)(ii) of this section. However, because Z's assets are subject to the appropriation process of state D for purposes unrelated to Z's exempt purposes, Z is W's sole supported organization, and a substantial part of W's activities directly further Z's exempt purposes, W qualifies for the exception in paragraph (i)(4)(iii) of this section. Accordingly, based on these facts, W qualifies as a functionally integrated Type III supporting organization under paragraph (4)(i)(A) of this section.

Example 7. P, an alumni association described in section 501(c)(3), was formed to promote a spirit of loyalty among graduates of Y University, a public university in state E described in section 509(a)(1), and to effect united action in promoting the general welfare of Y. Y is the sole named supported organization in P's articles of incorporation. Under the laws of state E, Y's assets are subject to the appropriation process for any state E purpose. P manages an endowment created by gifts from the alumni. A special committee of Y's governing board meets with P and makes recommendations as to the allocation of P's program of gifts and scholarships to the university and its students. More than a substantial part of P's activities, however, consist of maintaining records of alumni and publishing a bulletin to keep alumni aware of the activities of the university. But for the activities of P, Y would normally engage in these same activities. P's endowment management activities are not considered activities that directly further the exempt purposes of Y under paragraph (i)(4)(ii) of this section. However, because Y's assets are subject to the appropriation process of state E for purposes unrelated to Y's exempt purposes, Y is P's sole supported organization, and a substantial part of P's activities directly further Y's exempt purposes, P qualifies for the exception in paragraph (i)(4)(iii) of this section. Accordingly, based on these facts, P qualifies as a functionally integrated Type III supporting organization under paragraph (4)(i)(A) of this section.

(5) *Integral part test — non-functionally integrated Type III supporting organization*—(i) A supporting organization meets the integral part test as a non-functionally integrated Type III supporting organization if it satisfies either:

(A) The distribution requirement of paragraph (i)(5)(ii) of this section and the attentiveness requirement of paragraph (i)(5)(iii) of this section; or

(B) The pre-1970 trust requirements of paragraph (i)(9) of this section.

(ii) *Distribution requirement*. (A) The supporting organization must distribute, with respect to each taxable year, to or for the use of one or more supported organizations, amounts equaling or exceeding the supporting organization's annual distributable amount for such year, as defined in paragraph (i)(5)(ii)(B) of this section, on or before the last day of such taxable year.

(B) *Annual distributable amount*. Except as provided in paragraphs (i)(5)(ii)(C) and (i)(5)(ii)(D) of this section, the annual distributable amount for a taxable year is:

(*1*) five percent of the excess of the aggregate fair market value of all non-exempt-use assets (determined under paragraph (i)(8) of this section) over the acquisition indebtedness with respect to such non-exempt-use assets, determined under section 514(c)(1) without regard to the taxable year in which the indebtedness was incurred; increased by

(*2*) amounts received or accrued as repayments of amounts which were taken into account by the organization to meet the distribution requirement imposed in paragraph (i)(5)(ii)(A) of this section for any taxable year; increased by

(*3*) amounts received or accrued from the sale or other disposition of property to the extent that the acquisition of such property was taken into account by the organization to meet the distribution requirement imposed in paragraph (i)(5)(ii)(A) of this section for any taxable year; and reduced by

(*4*) the amount of taxes imposed on the supporting organization for such taxable year under subtitle A of the Code.

(C) *First taxable year of existence*. The annual distributable amount for the first taxable year an organization is treated as a non-functionally integrated Type III supporting organization is zero.

(D) *Emergency temporary reduction*. The Secretary may provide by publication in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(*b*) of this chapter) for a temporary reduction in the annual distributable amount in the case of a disaster or emergency.

(E) *Reasonable cause exception*. An organization that fails to meet the distribution requirement of paragraph (i)(5)(ii) of this section will not be classified as a private foundation in the taxable year for which it fails to meet such distribution requirement, if the organization establishes to the satisfaction of the Secretary that:

(*1*) The failure was due solely to an incorrect valuation of assets, a ministerial error, or unforeseen events or circumstances that are beyond the organization's control,

(*2*) The failure was due to reasonable cause and not to willful neglect, and

(*3*) The distribution requirement is met within 180 days after the date the incorrect valuation or ministerial error was or should have been discovered, or 180 days after the organization is first able to make its required payout notwithstanding the unforeseen event or circumstances.

(iii) *Attentiveness requirement*. (A) *General rule*. A non-functionally integrated Type III supporting organization must distribute one-third or more of its annual distributable amount to one or more supported organizations that are attentive to the operations of the supporting organization and to which the supporting organization is responsive under paragraph (i)(3) of this section.

(B) Except as provided in paragraph (i)(5)(iii)(C) of this section, a supported organization is attentive to the operations of the supporting organization if the supporting organization distributes annually to such supported organization an amount of support that represents a sufficient part of the supported organization's total support. A supporting organization must meet the requirements of paragraphs (i)(5)(iii)(B)(*1*), (i)(5)(iii)(B)(*2*), or (i)(5)(iii)(B)(*3*) of this section to demonstrate that it is attentive. If a supporting organization makes payments to, or for the use of, a particular department or school of a university, hospital or church, the total support of the department or school shall be substituted for the total support of the beneficiary organization.

(*1*) The supporting organization distributes annually to the supported organization an amount that is 10 percent or more of the supported organization's total support.

(*2*) The amount of support received from the supporting organization is necessary to avoid the interruption of the carrying on of a particular function or activity. The support is necessary if the supporting organization or the supported organization earmarks the support for a particular program or activity, even if such program or activity is not the supported organization's primary program or activity so long as such program or activity is a substantial one.

(*3*) Based on the consideration of all pertinent factors, including the number of supported organizations, the length and nature of the relationship between the supported organization and supporting organization and the purpose to which the funds are put, the amount of support is a sufficient part of a supported organization's total support. Normally the attentiveness of a supported organization is motivated by reason of the amounts received from the supporting organization. Thus, the more substantial the amount involved, in terms of a percentage of the supported organization's total support, the greater the likelihood that the required degree of attentiveness will be present. However, in determining whether the amount received from the supporting organization is sufficient to ensure the attentiveness of the supported organization to the operations of the supporting organization (including attentiveness to the nature and yield of such supporting organization's investments), evidence of actual attentiveness by the supported organization is of almost equal importance. A supported organization is not considered to be attentive solely because it has enforceable rights against the supporting organization under state law.

(C) *Distribution to donor-advised fund does not establish attentiveness*. Notwithstanding paragraphs (i)(5)(iii)(A) and (i)(5)(iii)(B) of this section, a supported organization will not be considered attentive to the operations of a supporting organization with respect to any amount received from the supporting organization that is held by the supported organization in a donor advised fund described in section 4966(d)(2).

(iv) Paragraph (5)(iii)(B)(*2*) of this section is illustrated by *examples 1* and *2* and paragraph (5)(iii)(B) of this section is illustrated by *examples 3* and *4*:

Example 1. K, an organization described in section 501(c)(3), annually pays over an amount equal to five percent of its assets to L, a museum described in section 509(a)(2). K meets the responsiveness test described in paragraph (i)(3) of this section with respect to L. In recent years, L has earmarked the income received from K to underwrite the cost of carrying on a chamber music series consisting of 12 performances a year that are performed for the general public free of charge at its premises. The chamber music series is not L's primary activity. L could not continue the performances without K's support. Based on these facts, K meets the requirements of paragraph (i)(5)(iii)(B)(*2*) of this section.

Example 2. M, an organization described in section 501(c)(3), pays annually an amount equal to five percent of its assets to the Law School of N University, an organization described in section 509(a)(1). M meets the responsiveness test described in paragraph (i)(3) of this section with respect to N. M has earmarked the income paid over to N's Law School to endow a chair in International Law. Without M's continued support, N could not continue to maintain this chair. Based on these facts, M meets the requirements of paragraph (i)(5)(iii)(B)(*2*) of this section.

Example 3. R is a charitable trust created under the will of B, who died in 1969. R's purpose is to hold assets as an endowment for S, a hospital, T, a university, and U, a national medical research organization (all organizations described in section 509(a)(1) and specifically named in the trust instrument), and to distribute all of the income each year in equal shares among the three named beneficiaries. Each year, R pays an amount equal to five percent of its assets to each of S, T, and U. Such payments are less than one percent of each organization's total support. Based on these facts, R does not meet the attentiveness requirement of paragraph (i)(5)(iii)(B). However, because B died prior to November 20, 1970, R could, upon meeting all of the requirements of paragraph (i)(9) of this section, be considered as meeting the requirements of paragraph (i)(5)(i)(B) of this section.

Example 4. O is an organization described in section 501(c)(3). O is organized to support five private universities, V, W, X, Y and Z, each of which is described in section 509(a)(1). O meets the responsiveness test under paragraph (i)(3) of this section only as to V. Each year, O distributes five percent of the fair market value of its non-exempt-use assets in equal amounts to the five universities. O distributes annually more than 10 percent of the total annual support of V and W. Based on these facts O does not meet the requirements of paragraph (i)(5)(iii) of this section. Although both V and W are attentive to the operations of O under paragraph (i)(5)(iii)(B)(*1*) of this section, O is only responsive to V. Accordingly, O distributes only one-fifth (*i.e.*, less than the required one-third) of its annual distributable amount to supported organization(s) that are both attentive to O and to which O is also responsive under paragraph (i)(3) of this section.

(6) *Distributions*. For purposes of this paragraph (i)(6), the amount of a distribution made to a supported organization is the fair market value of such property as of the date such distribution is made. The amount of a distribution will be determined solely on the cash receipts and disbursements method of accounting described in section 446(c)(1). Distributions that count toward the distribution requirement imposed in paragraph (i)(5)(ii)(A) of this section shall include:

(i) any amount paid to a supported organization to accomplish its exempt purposes,

(ii) any amount paid to acquire an asset used (or held for use) to carry out the exempt purposes of the supported organization(s), and

(iii) any amount expended by the supporting organization for reasonable and necessary administrative expenses.

(7) *Carryover of excess amounts*—(i) *In general*. If with respect to any taxable year, an excess amount, as defined in paragraph (i)(7)(ii) of this section, is created, such excess amount may be used to reduce the annual distributable amount in any of the five taxable years immediately following the taxable year in which the excess amount is created (the "carryover period"). An excess amount created in a taxable year cannot be carried over beyond the succeeding five taxable years. With respect to any taxable year to which an excess amount is carried over, in determining whether an excess amount is created in that taxable year, the annual distributable amount is reduced first to the extent of any excess amounts carried over and then to the extent of distributions made in that taxable year.

(ii) *Excess amount*. An excess amount is created for any taxable year beginning after the effective date of these regulations if the total distributions made by a supporting organization to its supported organization(s) for such taxable year exceeds the supporting organization's annual distributable amount for such taxable year, as defined in paragraph (i)(5)(ii)(B) of this section, determined without regard to this paragraph.

(8) *Valuation of assets*—(i) *General rules*. (A) For purposes of determining the organization's annual distributable amount, as defined in paragraph (i)(5)(ii)(B) of this section, the determination of the fair market value of the non-exempt-use assets shall be made in the year preceding the year of the required distribution under paragraph (i)(5)(ii)(A) of this section. The aggregate fair market value of all non-exempt-use assets of a supporting organization is the sum of:

(*1*) The average of the fair market values on a monthly basis of securities for which market quotations are readily available (within the meaning of paragraph (i)(8)(iii)(A)(*1*) of this section);

(*2*) The average of the supporting organization's cash balances on a monthly basis (less the same amount of cash balances excluded under paragraph (i)(8)(i)(C)(*2*)(i*v*) of this section) from the computation of the annual distributable amount); and

(*3*) The fair market value of all other assets (except those assets described in paragraph (i)(8)(i)(B) or paragraph (i)(8)(i)(C) of this section) for the period of time during the taxable year for which such assets are held by the supporting organization.

(B) *Certain assets excluded*. For purposes of this paragraph, the non-exempt-use assets taken into account in determining the annual distributable amount described in paragraph (i)(5)(ii)(B) of this section shall not include the following:

(*1*) Any future interest (such as a vested or contingent remainder, whether legal or equitable) of a supporting organization in the income or corpus of any real or personal property, other than a future interest created by the supporting organization after August 17, 2006, until all intervening interests in, and rights to the actual possession or enjoyment of, such property have expired, or, although not actually reduced to the supporting organization's possession, until such future interest has been constructively received by the supporting organization, as where it has been credited to the supporting organization's account, set apart for the supporting organization, or otherwise made available so that the supporting organization may acquire it at any time or could have acquired it if notice of intention to acquire had been given;

(*2*) The assets of an estate until such time as such assets are distributed to the supporting organization or, due to a prolonged period of administration, such estate is considered terminated for Federal income tax purposes by operation of Treas. Reg. §1.641(b)–3(a);

(*3*) Any present interest of a supporting organization in any trust created and funded by another person;

(*4*) Any pledge to the supporting organization of money or property (whether or not the pledge may be legally enforced); and

(*5*) Any assets used (or held for use) to carry out the exempt purposes of the supported organization(s).

(C) *Assets used (or held for use) to carry out the exempt purposes of the supported organization(s)*—(*1*) *In general*. For purposes of paragraph (i)(8)(i)(B)(*5*) of this section, an asset is "used (or held for use) to carry out the exempt purposes of the supported organization(s)" only if the asset is actually used by the supporting organization in activities that carry out the exempt purposes of its supported organization(s), or if the supporting organization owns the asset and establishes to the satisfaction of the Commissioner that its immediate use for such exempt purpose is not practical (based on the facts and circumstances of the particular case) and that definite plans exist to commence such use on behalf of its supported organization(s) within a reasonable period of time. Consequently, assets that are held for the production of income or for investment (for example, stocks, bonds, interest-bearing notes, endowment funds, or, generally, leased real estate) are not being used (or held for use) to carry out the exempt purposes of the supported organization(s), even though the income from such assets is used to carry out such exempt purposes. Whether an asset is held for the production of income or for investment rather than used (or held for use) by the supporting organization to carry out the exempt purposes of the supported organization(s) is a question of fact. For example, an office building used for the purpose of providing offices for employees engaged in the management of endowment funds is not being used (or held for use) by the supporting organization to carry out the exempt purposes of the supported organization(s). However, where property is used both to carry out the exempt purposes of the supported organization(s) and for other purposes, if the former use represents 95 percent or more of the total use, such property shall be considered to be used exclusively to carry out an exempt purpose of the supported organization(s). If the use of such property to carry out the exempt purposes of the supported organization(s) represents less than 95 percent of the total use, reasonable allocation between such use and other use must be made for purposes of this paragraph. Property acquired by the supporting organization to be used to carry out the exempt purposes of the supported organization(s) may be considered as used (or held for use) to carry out such exempt purposes even though the property, in whole or in part, is leased for a limited period of time during which arrangements are made for its conversion to the use for which it was acquired, provided such income-producing use of the property does not exceed a reasonable period of time. Generally, one year shall be deemed to be a reasonable period of time for purposes of the immediately preceding sentence. Where the income-producing use continues beyond a reasonable period of time, the property shall not be deemed to be used by the supporting organization to carry out the exempt purposes of the supported organization(s), but, instead, as of the time the income-producing use becomes unreasonable, such property shall be treated as disposed of within the meaning of paragraph (i)(5)(ii)(B)(*3*) of this section to the extent that the acquisition of the property was taken into account by the organization to meet the distribution requirement imposed in paragraph (i)(5)(ii)(A) of this section for any taxable year. If, subsequently, the property is used by the supporting organization to carry out the exempt purposes of the supported organization(s), a distribution to its supported organization(s) in the amount of its then fair market value, determined in accordance with the rules contained in this paragraph (i)(8), shall be deemed to have been made as of the time such exempt purpose use begins.

(*2*) *Illustrations*. Examples of assets that are "used (or held for use) to carry out the exempt purposes of the supported organization(s)" include, but are not limited to, the following:

(*i*) Administrative assets, such as office equipment and supplies that are used by employees or consultants of the supporting organization, to the extent such assets are devoted to and used directly in the administration of the supporting organization's activities that carry out the exempt purposes of the supported organization(s).

(*ii*) Real estate or the portion of a building used by the supporting organization directly in its activities to carry out the exempt purposes of the supported organization(s).

(*iii*) Physical facilities used in the supporting organization's activities to carry out the exempt purposes of the supported organization(s), such as paintings or other works of art owned by the supporting organization that are on public display, fixtures and equipment in classrooms, and research facilities and related equipment, which under the facts and circumstances serve a useful purpose in the conduct of such exempt purpose activities.

(*iv*) The reasonable cash balances necessary to cover current administrative expenses and other normal and current disbursements directly connected to the supporting organization's activities to carry out the exempt purposes of the supported organization(s). The reasonable necessary cash balances will generally be deemed to be an amount, computed on an annual basis, equal to one and one-half percent of the fair market value of all of the supporting organization's assets, other than assets used or held for use to carry out the exempt purposes of the supported organization(s), without regard to this paragraph (i)(8)(i)(C)(*2*)(*iv*). However, if the Commissioner is satisfied that under the facts and circumstances an amount in addition to such one and one-half percent is necessary for payment of such expenses and disbursements, then such additional amount may also be excluded from the amount of assets described in paragraph (i)(5)(ii)(B) of this section. All remaining cash balances, including amounts necessary to pay any tax imposed by section 511 or section 4943, are to be included in the assets described in paragraph (i)(5)(ii)(B) of this section.

(*v*) Any property leased by the supporting organization in carrying out the exempt purposes of its supported organization(s) at no cost (or at a nominal rent) to the lessee, such as the leasing of renovated apartments to low-income tenants at a low rental as part of the lessor-supporting organization's program for rehabilitating a blighted portion of the community.

(ii) *Valuation of assets — timing*. For purposes of determining the annual distributable amount for a taxable year, the supporting organization's assets are to be valued over the preceding taxable year.

(iii) *Valuation of assets*—(A) *Certain securities*. (*1*) For purposes of this paragraph, a supporting organization may use any reasonable method to determine the fair market value on a monthly basis of securities for which market quotations are readily available, as long as such method is consistently used.

(*2*) For purposes of this paragraph, market quotations are readily available if a security is:

(*i*) Listed on the New York Stock Exchange, the American Stock Exchange, or any city or regional exchange in which quotations appear on a daily basis, including foreign securities listed on a recognized foreign national or regional exchange;

(*ii*) Regularly traded in the national or regional over-the-counter market, for which published quotations are available; or

(*iii*) Locally traded, for which quotations can readily be obtained from established brokerage firms.

(*3*) For purposes of this paragraph, if the supporting organization can show that the value of securities determined on the basis of market quotations as provided by paragraph (i)(8)(iii)(A)(*2*) of this section, does not reflect the fair market value thereof because:

(*i*) The securities constitute a block of securities so large in relation to the volume of actual sales on the existing market that it could not be liquidated in a reasonable time without depressing the market;

(*ii*) The securities are securities in a closely held corporation and sales are few or of a sporadic nature; and/or

(*iii*) The sale of the securities would result in a forced or distress sale because the securities could not be offered to the public for sale without first being registered under the Securities Act of 1933 or because of other factors, then the price at which the securities could be sold as such outside the usual market, as through an underwriter, may be a more accurate indication of value than market quotations. On the other hand, if the securities to be valued represent a controlling interest, either actual or effective, in a going business, the price at which other lots change hands may have little relation to the true value of the securities. No decrease in the fair market value of any given class of securities determined on the basis of market quotations as provided by paragraph (i)(8)(iii)(A)(*2*) of this section shall be allowed except as authorized by this paragraph, and no such decrease shall in the aggregate exceed 10 percent of the fair market value of such class of securities so determined on the basis of market quotations and without regard to this paragraph.

(*4*) In the case of securities described in paragraph (i)(8)(iii)(A)(*2*) of this section, that are held in trust for, or on behalf of, a supporting organization by a bank or other financial institution that values such securities periodically by use of a computer, a supporting organization may determine the correct value of such securities by use of such computer pricing system, provided the Commissioner has accepted such computer pricing system as a valid method for valuing securities for Federal estate tax purposes.

(B) *Cash*. In order to determine the amount of a supporting organization's cash balances, the supporting organization shall value its cash on a monthly basis by averaging the amount of cash on hand as of the first day of each month and as of the last day of each month.

(C) *Common trust funds*. If a supporting organization owns a participating interest in a common trust fund (as defined in section 584) established and administered under a plan providing for the periodic valuation of participating interests during the fund's taxable year and the reporting of such valuations to participants, the value of the supporting organization's interest in the common trust fund based upon the average of the valuations reported to the supporting organization during its taxable year will ordinarily constitute an acceptable method of valuation.

(D) *Other assets*. (*1*) Except as otherwise provided in paragraph (i)(8)(iii)(D)(*2*) of this section, the fair market value of assets other than those described in paragraphs (i)(8)(iii)(A) through (i)(8)(iii)(C) of this section, shall be determined annually. Thus, the fair market value of securities other than those described in paragraph (i)(8)(iii)(A) of this section shall be determined in accordance with this paragraph (i)(8)(iii)(D)(*1*). If, however, a supporting organization owns voting stock of an issuer of unlisted securities and has, or together with disqualified persons or another supporting organization has, effective control of the issuer (within the meaning of §53.4943–3(b)(3)(ii)), then to the extent that the issuer's assets consist of shares of listed securities issues, such assets shall be valued monthly on the basis of market quotations or in accordance with section 4942(e)(2)(B), if applicable. Thus, for example, if a supporting organization and a disqualified person together own all of the unlisted voting stock of a holding company that in turn holds a portfolio of securities of issues that are listed on the New York Stock Exchange, in determining the net worth of the holding company, the underlying portfolio securities are to be valued monthly by reference to market quotations for their issues unless a decrease in such value is authorized in accordance with section 4942(e)(2)(B). Such determination may be made by employees of the supporting organization or by any other person without regard to whether such person is a disqualified person with respect to the supporting organization. A valuation made pursuant to the provisions of this paragraph, if accepted by the Commissioner, shall be valid only for the taxable year for which it is made. A new valuation made in accordance with these provisions is required for the succeeding taxable year.

(*2*) If the requirements of this paragraph are met, the fair market value of any interest in real property, including any improvements thereon, may be determined on a five-year basis. Such value must be determined by means of a certified, independent appraisal made in writing by a qualified person who is neither a disqualified person with respect to, nor an employee of, the supporting organization. The appraisal is certified only if it contains a statement at the end thereof to the effect that, in the opinion of the appraiser, the values placed on the assets appraised were determined in accordance with valuation principles regularly employed in making appraisals of such property using all reasonable valuation methods. The supporting organization shall retain a copy of the independent appraisal for its records. If a valuation made pursuant to the provisions of this paragraph in fact falls within the range of reasonable values for the appraised property, such valuation may be used by the supporting organization for the taxable year for which the valuation is made and for each of the succeeding four taxable years. Any valuation made pursuant to the provisions of this paragraph may be replaced during the five-year period by a subsequent five-year valuation made in accordance with the rules set forth in this paragraph (i)(8)(iii)(D)(*2*), or with an annual valuation made in accordance with paragraph (i)(8)(iii)(D)(*1*) of this section, and the most recent such valuation of such assets shall be used in computing the supporting organization's annual distributable amount. A valuation made in accordance with this paragraph must be made no later than the last day of the first taxable year for which such valuation is applicable. A valuation, if properly made in accordance with the rules set forth in this paragraph, will not be disturbed by the Commissioner during the five-year period for which it applies even if the actual fair market value of such property changes during such period.

(*3*) For purposes of this paragraph (i)(8)(iii)(D)(*3*), commonly accepted methods of valuation must be used in making an appraisal. Valuations made in accordance with the principles stated in the regulations under section 2031 constitute acceptable methods of valuation. The term "appraisal," as used in this paragraph (i)(8)(iii)(D)(*3*), means a determination of fair market value and is not to be construed in a technical sense peculiar to particular property or interests therein, such as, for example, mineral interests in real property.

(E) *Definition of "securities"*. For purposes of this paragraph (i)(8)(iii)(E), the term "securities" includes, but is not limited to, common and preferred stocks, bonds, and mutual fund shares.

(F) *Valuation date*. (*1*) In the case of an asset that is required to be valued on an annual basis as provided in paragraph (i)(8)(iii)(D)(*1*) of this section, such asset may be valued as of any day in the supporting organization's taxable year to which such valuation applies, provided the supporting organization follows a consistent practice of valuing such asset as of such date in all taxable years.

(*2*) A valuation described in paragraph (i)(8)(iii)(D)(*2*) of this section may be made as of any day in the first taxable year of the supporting organization to which such valuation is to be applied.

(G) *Assets held for less than a taxable year*. For purposes of this paragraph (i)(8)(iii)(G), any asset described in paragraph (i)(8)(i)(A) of this section that is held by a supporting organization for only part of a taxable year shall be taken into account for purposes of determining the supporting organization's annual distributable amount for such taxable year by multiplying the fair market value of such asset (as determined pursuant to paragraph (i)(8) of this section) by a fraction, the numerator of which is the number of days in such taxable year that the supporting organization held such asset and the denominator of which is the number of days in such taxable year.

(9) *Exception to integral part test for certain trusts*. A trust (whether or not exempt from taxation under section 501(a)) that on November 20, 1970, met and continues to meet the requirements of paragraphs (i)(9)(i) through (i)(9)(v) of this section, shall be treated as meeting the requirements of the integral part test (whether or not it meets the requirements of paragraph (i)(4) or paragraph (i)(5) of this section) if for taxable years beginning after October 16, 1972, the trustee of such trust makes annual written reports to all of the beneficiary supported organizations with respect to such trust setting forth a description of the assets of the trust, including a detailed list of the assets and the income produced by such assets. A trust organization that meets the requirements of this paragraph may request a ruling that it is described in section 509(a)(3) in such manner as the Commissioner may prescribe.

(i) All the unexpired interests in the trust are devoted to one or more purposes described in section 170(c)(1) or (2)(B) and a deduction was allowed with respect to such interests under sections

170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), 2522, or corresponding provisions of prior law (or would have been allowed such a deduction if the trust had not been created before 1913);

(ii) The trust was created prior to November 20, 1970, and did not receive any grant, contribution, bequest or other transfer on or after such date. For purpose of this paragraph (i)(9)(ii), a split-interest trust described in section 4947(a)(2) that was created prior to November 20, 1970, was irrevocable on such date, and that becomes a charitable trust described in section 4947(a)(1) after such date shall be treated as having been created prior to such date;

(iii) The trust is required by its governing instrument to distribute all of its net income currently to a designated beneficiary supported organization. Where more than one beneficiary supported organization is designated in the governing instrument of a trust, all of the net income must be distributable and must be distributed currently to each of such beneficiary organizations in fixed shares pursuant to such governing instrument. For purposes of this paragraph (i)(9)(iii), the governing instrument of a charitable trust shall be treated as requiring distribution to a designated beneficiary organization where the trust instrument describes the charitable purpose of the trust so completely that such description can apply to only one existing beneficiary organization and is of sufficient particularity as to vest in such organization rights against the trust enforceable in a court possessing equitable powers;

(iv) The trustee of the trust does not have discretion to vary either the beneficiaries or the amounts payable to the beneficiaries. For purposes of this paragraph (i)(9)(iv), a trustee shall not be treated as having such discretion where the trustee has discretion to make payments of principal to the single section 509(a)(1) or (2) organization that is currently entitled to receive all of the trust's income or where the trust instrument provides that the trustee may cease making income payments to a particular charitable beneficiary in the event of certain specific occurrences, such as the loss of exemption under section 501(c)(3) or classification under section 509(a)(1) or (2) by the beneficiary or the failure of the beneficiary to carry out its charitable purpose properly; and

(v) None of the trustees would be disqualified persons within the meaning of section 4946(a) (other than foundation managers under section 4946(a)(1)(B)) with respect to the trust if such trust were treated as a private foundation.

(10) *Foreign supported organizations*. A supporting organization is not operated in connection with one or more supported organizations if it supports any supported organization organized outside of the United States.

(11) *Transition rules*—(i) A Type III supporting organization in existence on the effective date of these regulations that met and continues to meet the requirements of Treas. Reg. §1.509(a)–4(i)(3)(ii), as in effect prior to the date these regulations are published as final or temporary regulations, will be treated as meeting the requirements of paragraph (i)(4)(i) of this section until the first day of the organization's first taxable year beginning after the date these regulations are published as final or temporary regulations.

(ii) A Type III supporting organization in existence on the effective date of these regulations that met and continues to meet the requirements of Treas. Reg. §1.509(a)–4(i)(3)(iii), as in effect prior to the date these regulations are published as final or temporary regulations, will be treated as meeting the requirements of paragraph (i)(5)(i) of this section until the first day of its second taxable year beginning after the effective date of these regulations. Beginning in the first taxable year beginning after the effective date of these regulations, such organizations must value their assets according to paragraph (i)(8) of this section. Beginning in the second taxable year beginning after the effective date of these regulations (and in all succeeding taxable years), these organizations must meet all of the requirements of paragraph (i)(5)(i) of this section.

(iii) For the first taxable year after the effective date of these regulations, the annual distributable amount for Type III supporting organizations that are not functionally integrated is zero.

(12) *Effective/applicability date*. These regulations are effective on the date of publication of the Treasury decision adopting these rules as final or temporary regulations.

* * * * *

Part 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 3. The authority citation for part 53 continues to read in part as follows:

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

Par. 4. In §53.4943–11, section heading is revised and paragraphs (f) and (g) are added to read as follows:

§53.4943–11 Effective/Applicability date.

* * * * *

(f) Special transitional rule for private foundations that qualified as Type III supporting organizations before August 17, 2006. The present holdings of a private foundation that qualified as a Type III supporting organization under section 509(a)(3) immediately before August 17, 2006, and that was reclassified as a private foundation under section 509(a) on or after August 17, 2006, solely as a result of the rules enacted by section 1241 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), will be determined using the same rules that apply to Type III supporting organizations under section 4943(f)(7).

(g) Special transitional rule for Type III supporting organizations created as trusts before November 20, 1970. A trust that qualifies as a Type III supporting organization under section 509(a)(3) and meets the requirements of Treas. Reg. §1.509(a)–4(i)(9) will be treated as a "functionally integrated Type III supporting organization" for purposes of section 4943(f)(3)(A).

Linda E. Stiff,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on September 23, 2009, 8:45 a.m., and published in the issue of the Federal Register for September 24, 2009, 74 F.R. 48672)

Notice of Proposed Rulemaking

Clarification of Controlled Group Qualification Rules

REG–135005–07

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation to clarify which corporations are included in a controlled group of corporations. The regulation clarifies that a corporation that satisfies the controlled group rules for stock ownership and qualification is a member of such group, without regard to its status as a component member.

DATES: Written or electronic comments and request for a public hearing must be received by December 28, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–135005–07), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand–delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–135005–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–135005–07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Grid Glyer (202) 622–7930; concerning submissions of comments, Oluwafunmilayo Taylor (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 1563(a) defines four types of controlled groups of corporations. This definition is relevant for purposes of allocating certain tax benefits under section 1561, as well as other provisions of the Internal Revenue Code that incorporate the concept of a controlled group of corporations. In order for a corporation to be included in one of these controlled groups under section 1563(a), it must satisfy the stock ownership test for that type of group. In addition, other rules in section 1563 may also apply in order to determine whether a corporation satisfies the applicable stock ownership test. For example, section 1563(c) excludes certain stock of a corporation (for example, nonvoting stock that is limited and preferred as to dividends) from the definition of stock, section 1563(d) determines when to take into account the stock owned by a corporation, and section 1563(e) determines when stock of a corporation is constructively owned.

Section 1563(b) describes which corporations are "component members" of a section 1563(a) controlled group of corporations for purposes of section 1561 and section 1563, in part by excluding certain corporations under section 1563(b)(2). For example, certain special purpose corporations, such as tax-exempt corporations, are treated as excluded members and not as component members. See sections 1563(b)(2)(B) through 1563(b)(2)(E). Notwithstanding that a corporation is not a "component member," however, the IRS has consistently taken the position that the determination of whether a corporation is included in a controlled group under section 1563(a) is determined without applying section 1563(b).

Explanation of Provisions

The Treasury Department and the IRS propose to amend §1.1563–1 to clarify that an excluded member of a controlled group, such as a corporation described in sections 1563(b)(2)(B) through 1563(b)(2)(E), is nevertheless a member of the group. Specifically, the proposal will add paragraph (a)(1)(ii) to §1.1563–1 and an *Example* to §1.1563–1(b)(4).

Section 1563 was originally promulgated to limit the use of the tax benefit items described in section 1561 by the component members of a controlled group as defined in section 1563. S. Rep. No. 88–830 at 150 (1964), 1964–1 (Part 2) CB 502, 654. However, since then, certain other statutory and regulatory provisions have referenced the controlled group rules of section 1563 for other purposes. Some of these provisions adjust the definition of a controlled group to state that certain provisions of section 1563 do not apply.

For example, section 41(f)(1)(A)(i) provides that, in determining the amount of the credit for increasing research activities under section 41, all members of the same controlled group shall be treated as a single taxpayer. Section 41(f)(5)(B) provides that the term "controlled group of corporations" has the same meaning given to such term by section 1563(a), except that the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563. The effect of not applying section 1563(a)(4) is to treat two or more life insurance companies, which would otherwise be treated as members of a separate life insurance controlled group, each as a member of a controlled group described in section 1563(a)(1)–(3) (Section 1563(e)(3)(B) deals with an application of the constructive ownership rules; however, because that application is not relevant to the issue being addressed in this preamble, it will not be further discussed.). However, section 41(f)(5) and similar provisions make no reference to subsection (b) of section 1563. Section 1563(b), among other things, defines which corporations are "component members" and "excluded members" for purposes of section 1561 and section 1563. Nevertheless, some taxpayers have argued that a corporation that is an "excluded member" within the meaning of section 1563(b)(2) cannot, as a consequence, be a "member" of a section 1563(a) controlled group generally. This line of argument tends to equate a corporation's membership generally with such corporation's status as a component member.

The Treasury Department and the IRS disagree with such arguments and believe that an excluded member under section 1563(b)(2), while not a component member of a controlled group under section 1563(b)(1), is nevertheless a member of a controlled group under section 1563(a). See also §1.414(b)–1(a).

This position is supported by the clear language of the statute. Section 1563(b)(2) provides, in the introductory text, that a "corporation which is a *member* of a controlled group of corporations . . . shall be treated as an excluded member of such group . . .". Moreover, this position is also supported by the legislative history for sections 1561 and 1563, which states that "the determination of the corporations included within a parent–subsidiary controlled group, or a brother–sister controlled group, is made without regard to the type of corporation involved." S. Rep. No. 88–830 at 152 (1964), 1964–1 (Part 2) CB 505, 656; see also H.R. Rep. 88–749 at A201–202 (1963), 1964–1 (Part 2) CB 248, 449–450 (providing examples where an "excluded member" is treated as a member of a controlled group of corporations). Compare section 1504(a)(1)(A) (affiliated group comprised of includible corporations only). Therefore, this proposed regulation clarifies that a corporation identified in section 1563(b)(2) as an excluded member of a controlled group is nevertheless a member of such group for purposes of section 1563(a). Accordingly, a corporation whose stock is held by such an excluded member may be treated as a component member of the controlled group of corporations.

Finally, this proposed regulation further illustrates that an excluded member of a controlled group is treated as a member of such group by adding an example demonstrating that a controlled group can consist solely of excluded members.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation and because this regulation does 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) this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulation and how it can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this regulation is Grid Glyer of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in its development.

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Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1563–1 is amended by:

1. Redesignating paragraph (a)(1)(ii) as paragraph (a)(1)(iii) and adding paragraph (a)(1)(ii).

2. Adding *Example 4* to paragraph (b)(4).

3. Adding a sentence at the end of paragraph (e).

The additions to read as follows:

§1.1563–1 Definition of controlled group of corporations and component members and related concepts.

(a) * * *

(ii) *Special rules*. In determining whether a corporation is included in a controlled group of corporations, section 1563(b) shall not be taken into account. For rules defining a component member of a controlled group of corporations, including rules defining an excluded member and an additional member, see section 1563(b) and paragraph (b) of this section.

* * * *

(b) * * *

(4) * * *

Example 4. Individual A owns all of the stock of corporations X, Y and Z. Each of these corporations is an S corporation. X, Y, and Z are each members of a brother–sister controlled group, even though each such corporation is treated as an excluded member of such group. See §1.1563–1(b)(2)(ii)(C).

* * * * *

(e) * * * Paragraph (a)(1)(ii) of this section applies to taxable years beginning on or after the date of publication in the **Federal Register** of the Treasury decision adopting these rules as final regulations.

Linda E. Stiff,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on September 28, 2009, 8:45 a.m., and published in the issue of the Federal Register for September 29, 2009, 74 F.R. 49829)

Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

Announcement 2009-84

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

The disciplinary sanctions to be imposed for violation of the regulations are:

Disbarred from practice before the IRS—An individual who is disbarred is not eligible to represent taxpayers before the IRS.

Suspended from practice before the IRS—An individual who is suspended is not eligible to represent taxpayers before the IRS during the term of the suspension.

Censured in practice before the IRS—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to represent taxpayers before the IRS, but OPR may subject the individual's future representations to conditions designed to promote high standards of conduct.

Monetary penalty—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction or on an employer, firm, or entity if the individual was acting on its behalf and if it knew, or reasonably should have known, of the individual's conduct.

Disqualification of appraiser—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Under the regulations, attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e*., representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

Disbarred by decision after hearing, Suspended by decision after hearing, Censured by decision after hearing, Monetary penalty imposed after hearing, and Disqualified after hearing—An administrative law judge (ALJ) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations and issued a decision imposing one of these sanctions. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision became the final agency decision.

Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision—An ALJ, after finding that no answer to OPR's complaint had been filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current eligibility to practice (*i.e*., an active professional license or active enrollment status). An enrolled agent or an enrolled retirement plan agent may also offer to resign in order to avoid a disciplinary proceeding.

Suspended by decision in expedited proceeding, Suspended by default decision in expedited proceeding, Suspended by consent in expedited proceeding—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license and criminal convictions).

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary's delegate on appeal has issued a decision on or after September 26, 2007, which was the effective date of amendments to the regulations that permit making such decisions publicly available; (2) the individual has settled a disciplinary case by signing OPR's "consent to sanction" form, which requires consenting individuals to admit to one or more violations of the regulations and to consent to the disclosure of the individual's own return information related to the admitted violations (for example, failure to file Federal income tax returns); or (3) OPR has issued a decision in an expedited proceeding for suspension.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by the names of states and second by the last names of individuals. Unless otherwise indicated, section numbers (*e.g*., §10.51) refer to the regulations.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Louisiana				
Shreveport	Blackman, Jr., Gordon N.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (conviction under 26 U.S.C. § 7203, failure to file income tax return)	Indefinite from October 30, 2008

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Maryland				
Baltimore	Gisriel, Michael U.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from October 30, 2008
Massachusetts				
Norwell	Palmer, Andrew P.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from October 30, 2008
New Jersey				
Teaneck	Bekritsky, Stanley	CPA	Suspended by decision in expedited proceeding under § 10.82 (conviction under 18 U.S.C. § 371, conspiracy to defraud the United States by impeding and impairing the IRS & aiding and abetting the filing of a false partnership tax return)	Indefinite from November 2, 2008
Somerset	Fink, Edward M.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from October 30, 2008
Teaneck	Matthews, Sam S.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from October 30, 2008
New York				
St. James	Hytner, James T.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (suspension of attorney license)	Indefinite from October 30, 2008
Garden City	Krupnick, Sheldon M.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (suspension of attorney license)	Indefinite from October 30, 2008
Cold Spring Harbor	Woghin, Steven M.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from October 30, 2008

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
North Carolina				
Fayetteville	Rwejuna, Israel W.	CPA	Suspended by default decision in expedited proceeding under §10.82 (revocation of CPA license)	Indefinite from October 30, 2008

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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