Internal Revenue
bulletin

Bulletin No. 2010-37
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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

Notice 2010–58, page 326.

This notice provides guidance in Q & A format to taxpayers on electing the 3, 4, or 5 year carryback of net operating losses or a 4 or 5 year carryback of losses from operations under section 13 of the Worker, Homeownership, and Business Assistance Act (WHBAA) of 2009.

Notice 2010–60, page 329.

This notice provides preliminary guidance regarding priority issues and requests comments involving the implementation of chapter 4 of the Code.

EXEMPT ORGANIZATIONS

Announcement 2010–55, page 346.

The IRS has revoked its determinations that the Buyer's Fund, Inc., of Salt Lake City, UT; Unicorn Development Corporation of Saint Joseph, MI; Ameri-Home Foundation, Inc., of Lenexa, KS; Credit Counseling Bureau of San Diego County, San Diego, CA; Exegetical Institute, Inc., of Kingsland, GA; Family Home Foundation, Inc., of Orem, UT; Home Downpayment Gift Foundation, Inc., of Washington, DC; and Xelan Foundation, Inc., of Tampa, FL, qualify as organizations described in Sections 501(c)(3) and 170(c)(2) of the Code.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the 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 III. Administrative, Procedural, and Miscellaneous

Expanded Carryback of Net Operating Losses and Losses from Operations

Notice 2010–58

This notice provides guidance related to § 13 of the Worker, Homeownership, and Business Assistance Act of 2009, Pub. L. No. 111–92, 123 Stat. 2984 (November 6, 2009) (the WHBAA). Section 13 of the WHBAA amends §§ 172(b)(1)(H) and 810(b) of the Internal Revenue Code to allow taxpayers to elect to carry back an applicable net operating loss (NOL) for a period of 3, 4, or 5 years, or a loss from operations for 4 or 5 years, to offset taxable income in those preceding taxable years. This notice addresses certain issues that have arisen under § 172(b)(1)(H), as amended by the WHBAA. This notice applies to losses from operations of a life insurance company under § 810 in the same manner as to NOLs under § 172.

BACKGROUND

In general

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

Section 56(a) provides certain adjustments that apply in computing alternative minimum taxable income (AMTI), in lieu of the treatment applicable in computing the regular tax. Section 56(a)(4) provides that the alternative tax net operating loss (ATNOL) deduction shall apply in lieu of the NOL deduction allowed under § 172 in determining the amount of alternative minimum taxable income. Section 56(d)(1) provides certain adjustments and limitations used in determining the ATNOL deduction for the taxable year. Under § 56(d)(1)(A)(i), the ATNOL deduction generally cannot exceed 90 percent of AMTI, determined without regard to the ATNOL deduction and the deduction under § 199 (the 90 percent limitation).

Section 810(b)(1)(A) provides that life insurance companies may carry back a loss from operations for any taxable year to each of the 3 years preceding the taxable year of the loss. Section 810(b)(3) provides that any taxpayer entitled to a carryback period under § 810(b)(1) may make an irrevocable election to relinquish the carryback period for a loss from operations for any taxable year.

American Recovery and Reinvestment Act of 2009

Section 1211 of the American Recovery and Reinvestment Tax Act of 2009, Div. B of Pub. L. No. 111–5, 123 Stat. 115 (February 17, 2009) (ARRA), amended § 172(b)(1)(H) to allow an eligible small business (ESB) to elect to carry back a 2008 applicable NOL for a period of 3, 4, or 5 years (ARRA election). Unlike the § 172(b)(1)(H) election under the WHBAA (WHBAA election), the ARRA election is applicable only to an NOL attributable to an ESB. The ARRA election is irrevocable and may be made for only one taxable year. Rev. Proc. 2009–26, 2009–19 I.R.B. 935 (April 25, 2009), modifying and superseding Rev. Proc. 2009–19, 2009–14 I.R.B. 747 (March 16, 2009), advises taxpayers how to make the ARRA election.

Worker, Homeowner, and Business Assistance Act of 2009

Section 172(b)(1)(H)(i), as amended by the WHBAA, permits a taxpayer to elect to carry back its applicable NOL to 3, 4, or 5 years preceding the taxable year of the applicable NOL. This election is not limited to an ESB. Section 172(b)(1)(H)(ii) provides that the term "applicable net operating loss" means the taxpayer's NOL for a taxable year ending after December 31, 2007, and beginning before January 1, 2010. Section 172(b)(1)(H)(iii) provides that the election under § 172(b)(1)(H) is required to be made in a manner prescribed by the Secretary, and must be made by the due date (including extensions) for filing the return for the taxpayer's last taxable year beginning in 2009. The election is irrevocable and, in general, may be made for only one taxable year. However, § 172(b)(1)(H)(v) allows a taxpayer that made or makes an ARRA election also to make a WHBAA election.

Section 172(b)(1)(H)(iv) limits the amount of an applicable NOL that a taxpayer elects under § 172(b)(1)(H)(i) to carry back to the 5th taxable year preceding the taxable year of the loss (5th preceding taxable year) to 50 percent of the taxpayer's taxable income for the 5th preceding taxable year. The taxable income for the 5th preceding taxable year is computed without regard to the NOL for the loss year or any taxable year thereafter. The excess of the amount of the loss over 50 percent of the taxable income, as determined under § 172(b)(2), for the 5th preceding taxable year is carried to later taxable years. For the carryback of an ATNOL to the 5th preceding taxable year, the 50 percent limitation is applied separately based on the AMTI. The limitation on the amount of an applicable NOL that may be carried back to the 5th preceding taxable year does not apply to an NOL carryback under the ARRA election.

Section 13(b) of the WHBAA amends § 56(d)(1)(A)(ii) to provide that the 90 percent limitation does not apply to an ATNOL deduction attributable to an applicable NOL for which a taxpayer made an election under § 172(b)(1)(H).

Section 13(e)(4) of the WHBAA provides that a taxpayer that has elected under §§ 172(b)(3) or 810(b)(3) to forgo a carryback for a loss for a taxable year ending before the date of enactment of the WHBAA (November 6, 2009) may revoke that election before the due date (including extensions) for filing the return for the taxpayer's last taxable year beginning in 2009. An application under § 6411(a) for the applicable NOL is treated as timely if filed before that due date.

Section 13(f) of the WHBAA provides that the election under § 172(b)(1)(H) is not available to certain taxpayers that receive benefits under the Emergency Economic Stabilization Act of 2008, Title I of Div. A of Pub. L. No. 110–343, 122 Stat.

3765, and certain affiliates of these taxpayers.

QUESTIONS AND ANSWERS

ARRA and WHBAA Elections

Q–1. A taxpayer makes a valid ARRA election for an NOL for 2008. May the taxpayer revoke the ARRA election to make a WHBAA election for the 2008 NOL?

A–1. No. The ARRA election is irrevocable and a taxpayer may not change or revoke the ARRA election made for 2008.

Q–2. A fiscal-year taxpayer has NOLs for its taxable years beginning in 2007, 2008, and 2009. The taxpayer makes a valid ARRA election for its taxable year beginning in 2007. May the taxpayer make a WHBAA election for its taxable year beginning in 2008 and another WHBAA election for its taxable year beginning in 2009?

A–2. No. Section 172(b)(1)(H)(v)(I) provides that, in the case of an ESB that made or makes an ARRA election, a § 172(b)(1)(H) election may be made for 2 taxable years. The ARRA election and the WHBAA election are both § 172(b)(1)(H) elections. Accordingly, the taxpayer may only make one ARRA election and one WHBAA election. If the taxpayer makes an ARRA election for its taxable year beginning in 2007, the taxpayer may make a WHBAA election for either the taxable year beginning in 2008 or the taxable year beginning in 2009, but not both.

Q–3. In the taxable year ending in 2008, a taxpayer has an NOL that is partly attributable to a business that is an ESB and partly attributable to a business that is not an ESB (a non-ESB). The taxpayer makes a valid ARRA election for the portion of the NOL attributable to the ESB. May the taxpayer make a WHBAA election for the portion of the NOL that is attributable to the non-ESB?

A–3. Yes. The ARRA election is applicable only to the portion of the NOL that is attributable to an ESB. The taxpayer may make a WHBAA election for the portion of the 2008 NOL that is attributable to the non-ESB.

Q–4. Assume the same facts as in Q–3 and that the taxpayer makes a valid WHBAA election for the portion of the NOL attributable to the non-ESB for the taxable year ending in 2008. May the taxpayer make a second WHBAA election for another taxable year?

A–4. No. The taxpayer may not make a second WHBAA election because the taxpayer may make only one election under the ARRA and one election under the WHBAA.

Q–5. In the taxable year ending in 2008, a taxpayer has an NOL that is partly attributable to an ESB and partly attributable to a non-ESB. For this taxable year the taxpayer makes a valid ARRA election for the portion of the NOL attributable to the ESB and elects a 5-year carryback for this NOL. The taxpayer carries back the portion of the NOL attributable to the non-ESB 2 years. After the enactment of the WHBAA, the taxpayer makes a valid WHBAA election for the portion of the NOL attributable to the non-ESB and elects a 5-year carryback for this NOL. In determining the NOL deduction for the 5th preceding taxable year, how does the 50 percent of taxable income limitation apply?

A–5. The taxpayer computes taxable income for the 5th preceding taxable year without deducting the portion of the 2008 NOL for which the taxpayer previously made the ARRA election and without deducting the portion of the 2008 NOL for which the taxpayer is making an election under the WHBAA.

Q–6. If a taxpayer previously made an ARRA election, must the taxpayer continue to qualify as an ESB in the year of the WHBAA NOL in order to make a WHBAA election?

A–6. No. A taxpayer must qualify as an ESB only for the taxable year of the ARRA election.

Q–7. A taxpayer makes an ARRA election for an NOL for 2008. However, the Internal Revenue Service rejects the election because the NOL is attributable to a non-ESB. May the taxpayer make a WHBAA election for the 2008 NOL?

A–7. Yes. Because a non-ESB may make a WHBAA election, the taxpayer may make a WHBAA election for the 2008 NOL, provided it is timely filed.

Alternative Tax Net Operating Loss Deduction

Q–8. A calendar-year taxpayer makes an ARRA election for the taxpayer's NOL in 2008 and a WHBAA election for the taxpayer's NOL in 2009. Does the 90 percent limitation on the use of the ATNOL deduction apply for either the 2008 NOL or the 2009 NOL?

A–8. No. Under § 56(d)(1)(A)(ii)(I), the 90 percent limitation does not apply to the 2008 ATNOL for which the taxpayer makes an ARRA election or to the 2009 ATNOL for which the taxpayer makes a WHBAA election. The 90 percent limitation does not apply to any extended carryback election under § 172(b)(1)(H). Therefore, even if the taxpayer makes only the ARRA election for 2008, the 90 percent limitation does not apply.

Q–9. A taxpayer has an applicable NOL resulting from losses in certain investment arrangements that took the form of "Ponzi" schemes and qualify as theft losses. Section 172(b)(1)(F)(ii)(I) provides a 3-year carryback period for NOLs resulting from theft losses. May the taxpayer make the WHBAA election to carry back its applicable NOL to the 3rd preceding taxable year for the purpose of not being subject to the 90 percent limitation on deducting the ATNOL from the year of the theft loss?

A–9. Yes.

Q–10. A taxpayer incorporates in 2006 and adopts a calendar taxable year. The taxpayer has an NOL in 2008. May the taxpayer make the WHBAA election and elect to carry back its 2008 NOL to the 3rd preceding taxable year for the purpose of not being subject to the 90 percent limitation on deducting the ATNOL from 2008?

A–10. No. The taxpayer cannot make a WHBAA election because it does not have a 3rd, 4th, or 5th preceding taxable year to which to carry back its NOL.

Q–11. A taxpayer incorporates in 2006 and adopts a calendar taxable year. The taxpayer has NOLs in 2006, 2007, 2008, and 2009. May the taxpayer make the WHBAA election to carry back its 2009 NOL to the 3rd preceding taxable year for the purpose of not being subject to the 90 percent limitation on deducting the ATNOL from 2009?

A–11. Yes. The taxpayer has a 3rd preceding taxable year to which to carry back its 2009 NOL, even though each of the taxable years preceding 2009 has a loss and none of the NOL is used in those years. Any 2009 NOL that is unused in the taxable years preceding 2009 also is not sub-

ject to the 90% limitation when applied to taxable years after 2009.

50 Percent Limitation

Q–12. In 2002, a taxpayer has an NOL of $100,000 that it carries over to 2003. The taxpayer has an NOL of $200,000 in 2005 that it carries back to 2003. In 2008, the taxpayer has an NOL of $500,000 and makes a WHBAA election to carry back its NOL 5 years to 2003. In 2003, the taxpayer has $400,000 taxable income before any NOL carryback or carryover. How much of the 2008 NOL may the taxpayer deduct in 2003?

A–12. The taxpayer's 2003 taxable income in the amount of $400,000 is first reduced by the $100,000 NOL carryover from 2002, and also reduced by the $200,000 NOL carryback from 2005. Accordingly, the 50 percent limitation is applied to the remaining $100,000 of taxable income. The taxpayer may deduct $50,000 of its 2008 NOL in 2003. The taxpayer's taxable income for 2003, after deducting the 2008 NOL, is $50,000.

Q–13. A taxpayer has an NOL in 2009 of $100,000 and makes a WHBAA election to carry it back 5 years to 2004. In 2004, the taxpayer has taxable income of $50,000 before the NOL carryback. The taxpayer has no NOLs from taxable years before 2009 that it may carry to 2004. Because the taxpayer is electing to carry back its NOL to the 5th preceding taxable year, the taxpayer may deduct only $25,000 (50 percent of $50,000) of the 2009 NOL in 2004. The portion of the taxpayer's 2009 NOL that may be carried to 2005 and thereafter must be determined in accordance with § 172(b)(2). Section 172(b)(2) provides that the portion of an NOL carried to a taxable year is the excess of the NOL (if any) over the sum of the taxable income for prior taxable years to which the NOL may be carried. For this purpose, taxable income for prior taxable years is computed with certain modifications. If the taxpayer's taxable income for 2004, as determined with the modifications required under § 172(b)(2) (modified taxable income), is $60,000, how much of the taxpayer's 2009 NOL may be carried to 2005?

A–13. Taxpayer's 2009 NOL is absorbed by 50 percent of the taxpayer's modified taxable income for 2004, that is, $30,000 (50 percent of $ 60,000). The taxpayer carries the unabsorbed portion of the 2009 NOL, $70,000, to 2005.

Other Issues

Q–14. Under § 301.9100–2(b) of the Procedure and Administration Regulations, a taxpayer that files a timely return has 6 months from the unextended due date for filing its federal income tax return for the last taxable year beginning in 2009 to make a WHBAA election on an amended return. Does a taxpayer that files a timely return similarly have 6 months from the unextended due date for filing its federal income tax return for the last taxable year beginning in 2009 to file a Form 1045 or 1139 to carry back an applicable NOL for which a taxpayer makes a WHBAA election?

A–14. Yes, whether a taxpayer makes a WHBAA election on an original or amended return or on a Form 1045 or 1139, the taxpayer has until 6 months from the unextended due date for filing its federal income tax return for the last taxable year beginning in 2009 to make the election.

Q–15. A calendar year C corporation is dissolved in June 2008. The taxpayer files the final tax return for the short taxable year by the due date, September 15, 2008, without an extension. The corporation files a Form 1139 in March 2009 to carry back its 2008 NOL to 2006. May the corporation file an amended Form 1139 to make a WHBAA election for the 2008 NOL, and if so, by when?

A–15. The corporation may amend its Form 1139 to make a WHBAA election for the 2008 NOL. The due date to make a WHBAA election and file an application for tentative refund is determined as if the corporation remained in existence and on a calendar taxable year for all of 2008 and 2009. Accordingly, the due date for the corporation to make a WHBAA election by filing an amended Form 1139 is September 15, 2010. The same due date applies if the corporation dissolves in 2009 instead of 2008.

Q–16. A taxpayer has an NOL in 2008 and elects to waive the carryback period under § 172(b)(3). May the taxpayer revoke its § 172(b)(3) election under § 13(e)(4)(A) of the WHBAA without making a WHBAA election for the 2008 NOL?

A–16. No. The taxpayer may revoke its § 172(b)(3) election for 2008 only if the taxpayer is making a WHBAA election for its 2008 NOL.

Q–17. If, before the enactment of the WHBAA, a taxpayer makes an election under § 168(k)(4) not to claim the additional first year depreciation for a taxable year ending after 2007 and beginning before 2010, may the taxpayer revoke this election to make a WHBAA election for an NOL in that taxable year?

A–17. A taxpayer may revoke the election not to claim the additional first year depreciation if the Service authorizes the revocation in a private letter ruling. See §1.168(k)–1(e)(7)(i). However, the Service generally will not issue a private letter ruling allowing the taxpayer to revoke an election not to claim the additional first year depreciation if the taxpayer is using hindsight to create or increase an NOL in that taxable year that is more beneficial to the taxpayer.

Q–18. A calendar year taxpayer has an NOL in 2008. After December 31, 2009, but before the due date of the taxpayer's 2009 return, the taxpayer files a Form 1045 to carry back its 2008 NOL to 2006. Is the taxpayer's Form 1045 timely?

A–18. No. The taxpayer's Form 1045 does not constitute a WHBAA election for the 2008 NOL because it is not an election to carry back the 2008 NOL for a period of 3, 4, or 5 years. If the taxpayer does not make a WHBAA election for the 2008 NOL, the Form 1045 must be filed within 12 months following the end of the loss year.

Q–19. A farming loss generally is carried back to each of the 5 taxable years preceding the taxable year of the loss under § 172(b)(1)(G). May a taxpayer make the WHBAA election for an applicable NOL attributable to the farming loss and carry back the NOL for a period of 3, 4, or 5 years?

A–19. Yes. However, the taxpayer must timely waive its 5-year carryback period for the NOL under § 172(i)(3) in order to make a WHBAA election to carry back the NOL for a period of 3 or 4 years. The taxpayer does not need to waive the 5-year carryback period under § 172(b)(1)(G) to elect a 5-year carryback period under the WHBAA.

Q–20. If a corporate taxpayer makes the WHBAA election and merges into another corporation in a later taxable year, is the acquiring corporation that has not previously made a WHBAA election allowed to make the WHBAA election for a taxable year of the acquiring corporation ending after December 31, 2007, and beginning before January 1, 2010?

A–20. Yes.

DRAFTING INFORMATION

The principal authors of this notice are Seoyeon Park and Forest Boone of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Park or Mr. Boone at 202–622–4960 (not a toll-free call).

Notice and Request for Comments Regarding Implementation of Information Reporting and Withholding Under Chapter 4 of the Code

Notice 2010–60

PURPOSE

On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Pub. L. 111–147 (H.R. 2847) (the Act) was enacted into law. Section 501(a) of the Act added a new chapter 4 (sections 1471 — 1474) to Subtitle A of the Internal Revenue Code (Code). Chapter 4 expands the information reporting requirements imposed on foreign financial institutions as defined in section 1471(d)(4) (FFIs) with respect to certain United States accounts as defined in section 1471(d)(1) (U.S. accounts). Chapter 4 also imposes withholding, documentation, and reporting requirements with respect to certain payments made to certain foreign entities.

Under section 501(d)(1) of the Act, chapter 4 is generally effective for payments made after December 31, 2012. The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) intend to issue guidance in advance of the effective date of chapter 4 to ensure that affected persons have time to implement the systems and processes necessary to comply fully with the new withholding, documentation, and reporting obligations imposed by chapter 4. Consistent with this intent, this notice provides preliminary guidance regarding priority issues involving the implementation of chapter 4, including the scope of obligations exempt from chapter 4 withholding under section 501(d)(2) of the Act, the definition of an FFI under section 1471(d)(4), the scope of collection of information and identification of persons by financial institutions under sections 1471 and 1472, and the information that FFIs must report to the IRS pursuant to an agreement under section 1471(b) (FFI Agreement) with respect to their U.S. accounts. In addition, this notice announces the IRS's intentions with respect to the electronic filing of returns for purposes of implementing section 6011(e)(4) as added by section 522 of the Act.

Treasury and the IRS intend to issue proposed regulations incorporating the guidance provided in this notice and addressing other matters necessary to implement chapter 4. In future guidance, Treasury and the IRS intend to publish a draft FFI Agreement and draft information reporting and certification forms. Treasury and the IRS request comments on the issues addressed in this notice and the priority of other issues that should be addressed in future guidance.

Section I. Grandfathered Obligations

Section 501(d)(2) of the Act provides that chapter 4 shall not require any amount to be deducted or withheld from any payment under any obligation outstanding on March 18, 2012, or from the gross proceeds from any disposition of such an obligation. Thus, any payment made pursuant to any obligation outstanding on March 18, 2012 (or any gross proceeds from the disposition of such an obligation) will not be subject to withholding under chapter 4.

Treasury and the IRS intend to issue regulations providing that the term "obligation" for purposes of section 501(d)(2) of the Act means any legal agreement that produces or could produce withholdable payments. Regulations will provide, however, that an obligation for this purpose does not include any instrument treated as equity for U.S. tax purposes, or any legal agreement that lacks a definitive expiration or term. Thus, for example, savings deposits, demand deposits, and other similar accounts are not obligations for purposes of section 501(d)(2) of the Act. For this purpose, a legal agreement that produces withholdable payments does not include brokerage, custodial and similar agreements to hold financial assets for the account of others and to make and receive payments of income and other amounts with respect to such assets.

Treasury and the IRS also intend to issue regulations providing that an obligation entered into on or before March 18, 2012 will be treated as outstanding on March 18, 2012 and that any material modification of an obligation will result in the obligation being treated as newly issued for purposes of section 501(d)(2) of the Act as of the effective date of such modification. In the case of an obligation that constitutes indebtedness for U.S. tax purposes, a material modification means any significant modification of the debt instrument as defined in § 1.1001–3. In all other cases, whether a modification of an obligation is material will be determined based on all relevant facts and circumstances.

Section II. FFIs and NFFEs

Section 1471(a) requires a withholding agent to deduct and withhold a tax equal to 30 percent of the amount of any withholdable payment to an FFI that does not meet the requirements of section 1471(b). To meet the requirements of section 1471(b), an FFI is generally required to enter into an FFI Agreement, under which the FFI (participating FFI) agrees to undertake certain due diligence, reporting, and withholding responsibilities.

Under section 1471(d)(4), an FFI is defined as any financial institution which is a foreign entity. A foreign entity is any entity that is not a United States person. Section 1473(5). A "financial institution" is defined under section 1471(d)(5) as an entity that falls within one (or more) of three categories. Although many entities may be within two or more of these three categories, an entity need only satisfy the definition of one of the three categories to be a financial institution for purposes of section 1471.

Section 1471(d)(5) provides regulatory authority to modify the definition of financial institution. Significantly, a foreign entity that is excluded from the definition of a

financial institution is a non-financial foreign entity, as defined in section 1472(d) (NFFE), and is subject to the documentation and reporting requirements applicable to NFFEs unless an exception applies.

Pursuant to section 1471(b)(2), the Secretary may treat an FFI as meeting the requirements of section 1471(b) (a deemed-compliant FFI) if the FFI: (i) complies with such procedures as the Secretary may prescribe to ensure that such institution does not maintain U.S. accounts and meets such other requirements as the Secretary may prescribe with respect to accounts of other FFIs maintained by such institution; or (ii) is a member of a class of institutions with respect to which the Secretary determines that application of section 1471 is not necessary to carry out the purposes of section 1471. Because such a deemed-compliant FFI would remain a financial institution under section 1471(d)(5), it would not be an NFFE, and therefore would not be subject to withholding under section 1472.

Section 1471(f) provides that withholding under section 1471(a) does not apply to any payment to the extent that the beneficial owner of such payment is (1) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing, (2) any international organization or any wholly owned agency or instrumentality thereof, (3) any foreign central bank of issue, or (4) any other class of persons identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion. Withholdable payments that are beneficially owned by an entity described in section 1471(f) are exempt from withholding under section 1471(a), whether received directly or through an FFI.

This section discusses the definition of "financial institution" for purposes of chapter 4. This section also identifies certain classes of foreign entities that will be (i) excluded from the definition of a financial institution and treated as NFFEs, (ii) treated as deemed-compliant FFIs, or (iii) identified as posing a low risk of tax evasion and exempted from withholding pursuant to section 1471(f).

A. *Section 1471(d)(5): Definition of "Financial Institution"*

Section 1471(d)(5) provides that, except as otherwise provided by the Secretary, the term "financial institution" means any entity that (A) accepts deposits in the ordinary course of a banking or similar business, (B) holds financial assets for the account of others as a substantial portion of its business, or (C) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities. As described in the following subsections, Treasury and the IRS intend to issue regulations providing guidance on each of the three categories of financial institutions set forth in section 1471(d)(5).

1. *Financial Institutions Under Section 1471(d)(5)(A)*

The first category of financial institutions described in section 1471(d)(5) are entities that accept deposits in the ordinary course of a banking or similar business. Such entities generally include, but are not limited to, entities that would qualify as banks under section 585(a)(2) (including banks as defined in section 581 and any corporation to which section 581 would apply except for the fact that it is a foreign corporation), savings banks, commercial banks, savings and loan associations, thrifts, credit unions, building societies and other cooperative banking institutions. The fact that an entity is subject to the banking and credit laws of the United States, a State, a political subdivision thereof, or a foreign country, or to supervision and examination by agencies having regulatory oversight of banking or similar institutions, is relevant to but not necessarily determinative of whether that entity qualifies as a financial institution under section 1471(d)(5)(A).

2. *Financial Institutions Under Section 1471(d)(5)(B)*

The second category of financial institutions described in section 1471(d)(5) are entities that as a substantial portion of their business, hold financial assets for the account of others. Such entities may include, for example, broker-dealers, clearing organizations, trust companies, custodial banks, and entities acting as custodians with respect to the assets of employee benefit plans. As in the case of deposit-taking institutions under section 1471(d)(5)(A), the fact that an entity is subject to the banking and credit laws or broker-dealer regulations of the United States, a State, a political subdivision thereof, or a foreign country, or to supervision and examination by agencies having regulatory oversight of banking or similar institutions, is relevant to but not necessarily determinative of whether that entity qualifies as a financial institution under section 1471(d)(5)(B).

3. *Financial Institutions Under Section 1471(d)(5)(C)*

The third category of financial institutions described in section 1471(d)(5) are entities that are engaged (or hold themselves out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities. Thus, this third category of financial institutions generally includes, but is not limited to, mutual funds (or their foreign equivalent), funds of funds (and other similar investments), exchange-traded funds, hedge funds, private equity and venture capital funds, other managed funds, commodity pools, and other investment vehicles.

Although the statute refers to the "business" of investing, reinvesting, or trading, the concept of "business" as used in section 1471(d)(5)(C) is different in scope and content from the concept of a "trade or business" as used in other sections of the Code. For example, isolated transactions that might not give rise to a trade or business for other purposes may cause an entity to be engaged primarily in the business of investing, reinvesting, or trading in securities, depending on such factors as the magnitude and importance of the transaction in comparison to the entity's other activities.

Treasury and the IRS anticipate that regulations will provide that whether an entity is engaged primarily in the business of investing, reinvesting, or trading in securities must be determined on the basis of all relevant facts and circumstances. Although the analysis is ultimately fact-specific, Treasury and the IRS contemplate that future guidance will provide guidelines for determining what types of activity, carried on in whole or in part, constitutes the business of investing, reinvesting, or trading, and when an entity is primarily engaged in such a business.

B. *Entities Excluded from Definition of Financial Institution and/or Otherwise Exempt from Some or All of the Obligations Imposed by Chapter 4*

Treasury and the IRS intend to issue guidance identifying certain classes of entities that are included in or excluded from the definitions of the terms "financial institution" and FFI, and describing the resulting treatment of such entities under chapter 4.

This section identifies entities that Treasury and the IRS intend to exclude from the definition of FFI and exempt from the requirements of section 1472. In addition, this section describes the treatment of certain specific classes of entities, including insurance companies, entities with certain identified owners, and entities organized in a U.S. possession or territory identified in section 937(a)(1) (U.S. territory).

1. *Entities That Will Be Exempt From Withholding Under Sections 1471 and 1472*

Treasury and the IRS intend to issue regulations providing that in general, a foreign entity that otherwise satisfies the definition of a financial institution solely because it is primarily engaged in investing, reinvesting or trading in securities will not be treated as a financial institution if it falls within one of the classes of foreign entities described in this subsection. Because these entities are excluded from being FFIs, they will be NFFEs. Treasury and the IRS, however, also intend to issue guidance pursuant to section 1472(c)(1) exempting payments beneficially owned by these entities from withholding under section 1472(a).

- *Certain holding companies*: A foreign entity the primary purpose of which is to act as a holding company for a subsidiary or group of subsidiaries that primarily engage in a trade or business other than that of a "financial institution," as defined under section 1471(d)(5) (an FI business), will be excluded from the definition of financial institution. Such holding companies would include, for example, a traditional holding company of a group of operating subsidiaries engaged primarily in a non-FI business. This class of excepted entities will not, however, include any entity functioning as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund or any investment vehicle whose purpose is to acquire or fund the start-up of companies and then hold those companies for investment purposes for a limited period of time.
- *Start-up companies*: A foreign start-up entity that is investing capital into assets with the intent to operate a business other than that of a financial institution, but is not yet operating such a business, will be excluded from the definition of financial institution for the first 24 months after its organization. After such time, a foreign entity will no longer qualify for this particular exclusion from the definition of an FFI. For this purpose, the class of excepted foreign start-up entities will not include a venture fund or other investment fund that invests in start-up entities.
- *Non-financial entities that are liquidating or emerging from reorganization or bankruptcy*: A foreign entity that is in the process of liquidating its assets or reorganizing with the intent to continue or recommence operations as a non-financial institution may be excluded from the definition of financial institution if it was not a financial institution before beginning the process of such liquidation or reorganization.
- *Hedging/financing centers of a non-financial group*: A foreign entity that primarily engages in financing and hedging transactions with or for members of its expanded affiliated group (as defined in section 1471(e)(2)) that are not FFIs and that does not provide such services to non-affiliates may be excluded from the definition of financial institution, provided that the expanded affiliated group is primarily engaged in a non-FI business.

Treasury and the IRS request comments as to how the classes of entities discussed above may be more specifically defined in regulations, what mechanisms withholding agents could use to properly identify such entities (including self-certification, as appropriate) and whether other classes of entities should be similarly excluded.

2. *Insurance Companies*

The definition of "financial institution" in section 1471(d)(5) is broad enough to encompass certain insurance companies. The statute grants the Secretary regulatory authority to exclude or include insurance companies and certain products sold by insurance companies within the definitions of "financial institution" and "financial account."

Treasury and the IRS do not view the issuance of insurance or reinsurance contracts without cash value as implicating the concerns of chapter 4. This would include, for example, most property and casualty insurance or reinsurance contracts or term life insurance contracts. Accordingly, Treasury and the IRS plan to issue regulations treating entities whose business consists solely of issuing such contracts as non-financial institutions for purposes of chapter 4.

However, other contracts such as life insurance (other than term life insurance contracts without cash value) or annuity contracts typically combine insurance protection with an investment component. Thus, such cash value insurance contracts or annuity contracts may present the risk of U.S. tax evasion that chapter 4 is designed to prevent. Treasury and the IRS request comments with respect to the appropriate treatment under chapter 4 of entities that issue cash value insurance contracts, annuity contracts, or similar arrangements, and with respect to the appropriate definition of cash value insurance contracts, annuity contracts and similar arrangements for this purpose.

3. *Entities with Certain Identified Owners*

The definition of FFI under section 1471(d)(5)(C) includes investment funds

and other entities that may have only a small number of direct or indirect account holders, all of whom are individuals or NFFEs that will not be subject to withholding or reporting under sections 1471 or 1472 or future regulations thereunder (excepted NFFEs). An example of such an entity may be a small family trust settled and funded by a single person for the sole benefit of his or her children. For such entities, the administrative burden of entering into an FFI Agreement and complying with the reporting requirements thereunder may be disproportionate to the amount of U.S. investments giving rise to withholdable payments or passthru payments beneficially owned by such entity.

Treasury and the IRS intend to issue guidance under which certain foreign entities that are FFIs described in section 1471(d)(5)(C), but are not described in section 1471(d)(5)(A) or (B), would be treated as deemed-compliant FFIs if the withholding agent (i) specifically identifies each individual, specified U.S. person, or excepted NFFE that has an interest in such entity, either directly or through ownership in one or more other entities, (ii) obtains from each such person the documentation that the withholding agent would be required to obtain from such person under the guidance described in Section III of this Notice if such person were a new account holder or direct payee of the withholding agent, and (iii) the withholding agent reports to the IRS, in such manner as will be provided in future guidance, any specified United States person identified as a direct or indirect interest holder in the entity (Documented FFIs). See Section III of this Notice for further details about the general documentation requirements applicable to financial institutions with respect to their account holders.

Treasury and the IRS request comments as to whether certain small FFIs should be required, for purposes of applying chapter 4, to be treated as NFFEs, regardless of whether withholding agents currently determine the direct and indirect owners of such entities for purposes of complying with local law or regulatory obligations.

4. *Financial Institutions Organized in U.S. Territories*

Although entities organized in a U.S. territory generally are treated as foreign for purposes of the Code, under section 1471(d)(4), except as otherwise provided by the Secretary, an FFI does not include a financial institution organized under the laws of a U.S. territory (Territory-Organized FI). Territory-Organized FIs are, however, withholding agents under chapter 4. Section 1473(4). Treasury and the IRS intend to coordinate with the territorial governments in the course of providing guidance regarding the treatment of Territory-Organized FIs. In general, Treasury and the IRS do not intend to treat Territory-Organized FIs as FFIs. However, Treasury and the IRS believe that additional guidance is necessary to address the chapter 4 withholding obligations of Territory-Organized FIs and to address potential compliance concerns.

Because Territory-Organized FIs are withholding agents under chapter 4, they are required to withhold under sections 1471 and 1472 if the withholding has not previously been satisfied by another withholding agent. However, sections 1471 and 1472 do not specify how withholding applies to withholdable payments made to FFIs and NFFEs through Territory-Organized FIs acting as intermediaries. Accordingly, it is unclear under sections 1471 and 1472 whether a U.S. withholding agent making withholdable payments to an FFI or NFFE through a Territory-Organized FI acting in its capacity as an intermediary should apply withholding unless the Territory-Organized FI collected documentation establishing that withholding did not apply and provided that documentation to the U.S. withholding agent. For chapter 3 purposes, this situation is addressed by permitting certain Territory-Organized FIs to assume the withholding and reporting responsibilities applicable to United States persons as defined in section 7701(a)(30) (U.S. persons). See § 1.1441–1(b)(2)(iv). Sections 1471 and 1472, however, do not expressly make this treatment available to Territory-Organized FIs for chapter 4 purposes.

To help relieve the burden on Territory-Organized FIs receiving withholdable payments on behalf of account holders, Treasury and the IRS intend to issue guidance under which a Territory-Organized FI that receives withholdable payments in its capacity as an intermediary would be permitted to represent in writing to its withholding agent that with respect to the payment it is assuming the responsibilities imposed on U.S. withholding agents under sections 1471 and 1472. A Territory-Organized FI assuming such responsibilities would not be subject to withholding under section 1471 or 1472 with respect to such payments.

In addition, Treasury and the IRS are considering issuing guidance providing that a Territory-Organized FI that is described in section 1471(d)(5)(C) (and not in section 1471(d)(5)(A) or (B)) would not be treated as a financial institution, and instead would be treated as an NFFE with respect to withholdable payments or passthru payments that it receives for its own account. In that case, the Territory-Organized FI may qualify for an exception to section 1472 if the entity is organized under the laws of a U.S. territory and is wholly owned by one or more bona fide residents (as defined in section 937(a)) of such U.S. territory. Section 1472(c)(1)(C).

In addition, Treasury and the IRS intend to engage in discussions with the territorial governments for the purpose of exploring how the existing territorial information reporting regimes might be used to supplement the obligations of Territory-Organized FIs, such as by implementing information exchange or similar agreements to obtain information that is useful for identifying account holders of Territory-Organized FIs that are specified United States persons (specified U.S. persons), as defined in section 1473(3).

C. *Classes of Persons Posing a Low Risk of Tax Evasion Under Section 1471(f)(4) — Retirement Plans*

Pursuant to section 1471(f), withholding under section 1471(a) does not apply to any payment to the extent that the beneficial owner of such payment is part of a class of persons identified by the Secretary for purposes of section 1471(f) as posing a low risk of tax evasion. Although a retirement plan may qualify as a financial institution under section 1471(d)(5), Treasury and the IRS intend to issue guidance providing that certain foreign retirement plans

pose a low risk of tax evasion for chapter 4 purposes, and therefore payments beneficially owned by such retirement plans will be exempt from withholding under section 1471(a).

Treasury and the IRS anticipate that a foreign retirement plan will be identified as posing a low risk of tax evasion only if the retirement plan (i) qualifies as a retirement plan under the law of the country in which it is established, (ii) is sponsored by a foreign employer, and (iii) does not allow U.S. participants or beneficiaries other than employees that worked for the foreign employer in the country in which such retirement plan is established during the period in which benefits accrued. Comments are requested on the definition of a retirement plan for this purpose, and on how such a plan could appropriately identify or document itself to a withholding agent to verify its compliance with any such definitional requirements. In addition, comments are requested as to whether other categories of foreign employee benefit or deferred compensation plans should be subject to the same treatment as foreign retirement plans for chapter 4 purposes.

D. *Treatment of Certain Other Classes of Entities*

1. *U.S. Branches of FFIs*

Section 1471 does not provide an exception to the definition of an FFI in the case of a foreign entity that has a U.S. branch. Section 1473(1)(B), however, does exclude from the definition of a withholdable payment income taken into account under section 871(b)(1) or section 882(a)(1) (the ECI exclusion). The ECI exclusion would relieve an FFI from being subjected to withholding under section 1471(a) with respect to income it takes into account under section 871(b)(1) or section 882(a). The ECI exclusion does not, however, cover all payments that may be made to an FFI's U.S. branch. For example, the ECI exclusion is generally inapplicable to withholdable payments that a U.S. branch of an FFI receives on behalf of its account holders, rather than for its own account. The ECI exclusion is also inapplicable to withholdable payments that a U.S. branch of an FFI is paid for its own account and that are not taken into account under section 871(b)(1) or section 882(a).

Treasury and the IRS do not intend to exempt an FFI from the requirement to enter into an FFI Agreement, even if the FFI receives withholdable payments solely through its U.S. branch. Thus, where a U.S. branch of an FFI receives withholdable payments that are not eligible for the ECI exclusion, the FFI generally will be required to execute an FFI Agreement to avoid being subjected to withholding under section 1471(a).

When a U.S. branch of an FFI receives a withholdable payment as an intermediary, however, Treasury and the IRS are considering permitting the U.S. branch to document its account holders for chapter 4 withholding purposes under the requirements to be imposed on USFIs. See Section III of this notice for guidance on the documentation requirements to be imposed on USFIs. Treasury and the IRS anticipate that regulations will include rules coordinating the reporting required of FFIs with U.S. branches under chapter 4 with other U.S. tax reporting obligations, so as to avoid duplicative reporting with respect to accounts maintained by the U.S. branch of the FFI.

Treasury and IRS also intend to issue regulations regarding the application of the ECI exclusion by withholding agents making payments to U.S. branches of FFIs. Treasury and IRS do not intend that those regulations will incorporate the type of special presumption included for chapter 3 withholding purposes in § 1.1441–4(a)(2)(ii) for payments made to certain U.S. branches of regulated banks and insurance companies. Comments are requested as to other possible rules or methods that withholding agents could use to determine the application of the ECI exclusion.

2. *Controlled Foreign Corporations*

A controlled foreign corporation (as defined under section 957(a)) (CFC) that qualifies as a financial institution under section 1471(d)(5) is an FFI under section 1471(d)(4). Treasury and the IRS have received comments requesting that CFCs be treated as deemed-compliant FFIs under section 1471(b)(2) because CFCs already are subject to various information reporting requirements discussed below. Treasury and the IRS believe that it would not be appropriate to treat financial institution CFCs as deemed-compliant FFIs under section 1471(b)(2) (and exempt from the requirement to enter into an FFI Agreement) because the documentation and reporting requirements to which CFCs are currently subject are less stringent than those that apply to FFIs. Accordingly, such treatment could create a significant risk of tax evasion, and thus would be inconsistent with the objectives of chapter 4.

Although CFCs are U.S. payors as defined in § 1.6049–5(c)(5)(i) and are therefore subject to the Form 1099 reporting requirements applicable to such payors, these reporting obligations differ from the obligations imposed under section 1471(b) on FFIs in several respects. In particular, Form 1099 reporting obligations do not apply with respect to two important classes of account holders whose accounts would be subject to reporting or withholding obligations under section 1471. First, as U.S. payors, CFCs are not required to report on certain payments to domestic corporations, whereas FFIs are required to report information on account holders that are specified U.S. persons, which, pursuant to section 1473(3), includes certain domestic corporations. Second, as U.S. payors, CFCs are not generally required to report on the U.S. owners of foreign entities for which they maintain accounts, and the section 1472 requirements to identify and report certain U.S. owners of certain foreign entities would apply only if a CFC made a withholdable payment to an NFFE. In contrast, section 1471(c)(1)(A) requires FFIs to report information with respect to substantial United States owners (substantial U.S. owners), as defined in section 1473(2), of account holders that are United States owned foreign entities as defined in section 1471(d)(3) (U.S.-owned foreign entities). Such accounts are not limited to those accounts to which an FFI has made withholdable payments.

In addition to the disparities between the information reporting obligations discussed above, section 1471(b)(1)(F) requires FFIs to obtain waivers from account holders when a section 1471(b) reporting obligation would otherwise be prohibited under foreign law (or, in the absence of such a waiver, to close such holders' accounts). No comparable requirement would apply to FFIs that are CFCs if they were exempted from FFI

status. Accordingly, deeming CFCs to be compliant under section 1471(b)(2) would potentially result in disparate treatment of account holders of FFIs, depending on whether they held accounts with FFIs that are CFCs or other FFIs. Treasury and the IRS thus do not anticipate that financial institution CFCs will be exempted from the requirements to be imposed on other FFIs under section 1471(b). Treasury and the IRS do, however, anticipate coordinating the reporting required of financial institution CFCs under chapter 4 with other U.S. tax reporting obligations, with the objective of avoiding duplicative reporting.

E. *Comments Requested*

Treasury and the IRS request comments concerning the treatment under section 1471 of the entities described above, as well as the treatment of other foreign entities, including, for example, any foreign charitable organizations that may fall within the definition of an FFI. In particular, Treasury and the IRS request comments providing specific suggestions for defining and identifying specific classes of foreign entities that should be: (i) excluded from the definition of FFI; (ii) deemed to meet the requirements of section 1471(b) pursuant to section 1471(b)(2); or (iii) identified as posing a low risk of tax evasion pursuant to section 1471(f).

Section III. Collection of Information and Identification of Persons by Financial Institutions Under Sections 1471 and 1472

A. *Overview*

1. *Statutory Framework*

Section 1471 generally requires FFIs to enter into FFI Agreements to avoid withholding under section 1471(a). An FFI Agreement provides that the participating FFI agrees, among other requirements, to: (i) obtain such information regarding each holder of each account maintained by the FFI as is necessary to determine which (if any) of such accounts are U.S. accounts; (ii) comply with due diligence procedures the Secretary may require with respect to the identification of U.S. accounts; and (iii) report certain information with respect to U.S. accounts maintained by the FFI. Section 1471(b) and (c).

U.S. accounts are financial accounts which are held by one or more specified U.S. persons or U.S.-owned foreign entities. Section 1471(d)(1)(A). A specified U.S. person is (except as otherwise provided by the Secretary) any United States person other than certain types of entities that are expressly excluded under section 1473(3). A U.S.-owned foreign entity is any foreign entity which has one or more substantial U.S. owners. Section 1471(d)(3). A substantial U.S. owner is generally defined in section 1473(2) to include a specified U.S. person whose ownership interests in an entity exceed certain thresholds.

A participating FFI must also agree to withhold tax on certain payments made to non-participating FFIs and recalcitrant account holders. Section 1471(b)(1)(D). Recalcitrant account holders are those account holders that fail to comply with reasonable requests for information by a participating FFI in order for it to meet its obligations under section 1471(b) and (c), or that fail to provide a waiver in any case in which any foreign law would (but for such waiver) prevent the reporting of any information an FFI is required to report under section 1471(b) and (c). Section 1471(d)(6).

Section 1472(a) generally requires a withholding agent to deduct and withhold 30 percent of the gross amount of a withholdable payment made to an NFFE and beneficially owned by that NFFE or another NFFE, unless the beneficial owner is a member of an enumerated class of entities described in section 1472(c)(1) (excepted NFFEs), the payment is within a class of payments described in section 1472(c)(2), or certain documentation and reporting requirements are met. In addition, under section 1472, withholding agents are required to report certain information regarding the substantial U.S. owners of NFFEs, other than excepted NFFEs, that beneficially own withholdable payments.

Excepted NFFEs include (A) any corporation the stock of which is regularly traded on an established securities market, (B) any corporation which is a member of the same expanded affiliated group as a corporation the stock of which is regularly traded on an established securities market, (C) any entity which is organized under the laws of a U.S. territory and which is wholly owned by one or more *bona fide* residents (as defined in section 937(a)) of such U.S. territory, (D) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing, (E) any international organization or any wholly owned agency or instrumentality thereof, (F) any foreign central bank of issue, and (G) any other class of persons identified by the Secretary for purposes of section 1472(c).

2. *Responsibilities of Participating FFIs and USFIs*

To comply with the obligations imposed by sections 1471 and 1472, participating FFIs will need to determine (1) whether their individual account holders are to be treated as U.S. persons or other persons and (2) whether their account holders that are entities are to be treated as U.S. persons, FFIs, entities described in section 1471(f), or NFFEs. Participating FFIs will then need to determine: (1) whether entities that are U.S. persons are to be treated as specified U.S. persons or other U.S. persons; (2) whether FFIs are to be treated as participating FFIs, deemed-compliant FFIs, or non-participating FFIs; and (3) whether NFFEs are to be treated as U.S.-owned foreign entities. For this purpose, an NFFE will be treated as a U.S.-owned foreign entity to the extent that it is determined to have substantial U.S. owners. Any entity that is an excepted NFFE will be excluded from the definition of a U.S.-owned foreign entity.

To comply with the obligations imposed by sections 1471 and 1472, USFIs will need to make determinations similar to those required of participating FFIs. In particular, USFIs making withholdable payments to entities will need to determine whether to treat those entities as U.S. persons, FFIs, entities described in section 1471(f), or NFFEs. USFIs will then need to determine: (1) whether FFIs are to be treated as participating FFIs, deemed-compliant FFIs, or non-participating FFIs; and (2) whether NFFEs are to be treated as excepted NFFEs or as other NFFEs.

Subsections III.B. and III.C. of this Notice describe the procedures to be applied by participating FFIs and USFIs to make the determinations required to com-

ply with the provisions of sections 1471 and 1472. Subsection III.B. generally discusses the procedures to be applied by participating FFIs to make the requisite determinations described above for purposes of complying with both sections 1471 and 1472. For this purpose, Subsection III.B. distinguishes procedures for making such determinations with regard to each of the following four categories of accounts: (i) preexisting financial accounts held by individuals (preexisting individual accounts); (ii) new financial accounts held by individuals (new individual accounts); (iii) preexisting financial accounts held by persons other than individuals (preexisting entity accounts); and (iv) new financial accounts held by persons other than individuals (new entity accounts).

Subsection III.C. generally discusses the procedures to be applied by USFIs to make the requisite determinations for USFIs to comply with chapter 4. For this purpose, Subsection III.C. distinguishes procedures applicable to preexisting entity accounts from those applicable to new entity accounts.

B. *Participating FFIs*

1. *Reliance on Existing Documentation and Issuance of FFI EINs*

Under an FFI Agreement, participating FFIs will be required to identify certain of their account holders. For example, a participating FFI will be required to identify and report holders of financial accounts that are specified U.S. persons or U.S.-owned foreign entities. In some cases, a participating FFI may already have documented some of its preexisting account holders as U.S. persons. Form W–9 (*Request for Taxpayer Identification Number and Certification*) and Form W–8 BEN (*Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding*) are collected by certain foreign persons (including U.S. branches of FFIs, CFCs, qualified intermediaries and withholding partnerships and trusts) for certain U.S. tax purposes other than chapter 4. To facilitate compliance with the obligations imposed by chapter 4, participating FFIs will be permitted to rely on Forms W–9 they collect for other U.S. tax purposes (*i.e.*, for purposes of chapters 3 and 61 of the Code), and will generally be required to treat accounts of individuals that are so documented as U.S. accounts for purposes of chapter 4. Participating FFIs will also be required under chapter 4 to collect Form W–8BEN or Form W–9 (or acceptable substitute forms) from certain of their account holders. This requirement will be limited in scope, as described in the procedures below.

Participating FFIs (as well as other withholding agents) also will be required to identify other FFIs as participating FFIs, deemed-compliant FFIs, or non-participating FFIs (or as entities described in section 1471(f)). To facilitate this process, Treasury and the IRS contemplate that the IRS will issue employer identification numbers (EINs) to participating FFIs (FFI EINs) and that participating FFIs will use these FFI EINs to identify themselves to withholding agents. Until withholding agents are able to verify the status of FFIs with the IRS, withholding agents and participating FFIs will be permitted to rely on certifications provided by FFIs as to their status as participating FFIs, unless the withholding agent or participating FFI knows or has reason to know that the certification provided is incorrect.

2. *Individual Financial Accounts — Identification by Participating FFIs for Purposes of Section 1471*

For purposes of determining which (if any) of the accounts maintained by a participating FFI and held by individuals are U.S. accounts, future guidance will provide procedures that distinguish between (a) preexisting individual accounts and (b) new individual accounts.

a. *Preexisting Individual Accounts*

Preexisting individual accounts are financial accounts held by individuals as of the date that a participating FFI's FFI Agreement becomes effective. In the case of preexisting individual accounts, the participating FFI is required to determine whether such accounts are to be treated as U.S. accounts, accounts of recalcitrant account holders, or other accounts, according to the steps below.

1. The FFI may treat a depository account as other than a U.S. account if the average of the month-end balances or values during the calendar year preceding the entry into force of the FFI's FFI Agreement (or, if the balance or value is determined less frequently than monthly for purposes of reporting to the account holder, the average of the balance or value as determined for purposes of reporting to the account holder during the year) of all depository accounts held by the account holder at such FFI was less than $50,000 (or the equivalent in foreign currency). An FFI will be permitted to elect not to apply this step.
2. From among accounts not addressed in step 1, all account holders already documented as U.S. persons for other U.S. tax purposes (*e.g.*, for purposes of chapters 3 and 61 of the Code) will be treated as specified U.S. persons, and those account holders' financial accounts will be treated as U.S. accounts.
3. From among the accounts that are not addressed in step 1 or step 2, the FFI shall treat an account as other than a U.S. account if the electronically searchable information maintained by the FFI and associated with the account (*e.g.*, customer information kept for purposes of maintaining the account, corresponding with the account holder, or complying with regulatory requirements) does not include any of the following indicia of potential U.S. status: (i) identification of any account holder as a U.S. resident or U.S. citizen; (ii) a U.S. address associated with an account holder of the account (whether a residence address or a correspondence address); (iii) a U.S. place of birth for an account holder of the account; (iv) an "in care of" address, a "hold mail" address, or a P.O. address that is the sole address on file with respect to the account holder; (v) a power of attorney or signatory authority granted to a person with a U.S. address; or (vi) standing instructions to transfer funds to an account maintained in the U.S., or directions received from a U.S. address.
4. For all accounts identified as containing indicia of potential U.S. status in step 3, the FFI will be required to obtain certain documentation to establish whether the account is a U.S. account. In particular, if an account holder is identified as a U.S. resident

or citizen in item 3(i), the FFI shall obtain Forms W–9 from the individual account holder identified as a U.S. resident or citizen. If the account information includes any of the U.S. indicia identified in item 3(ii) or (iii), the FFI shall obtain Form W–9 establishing U.S. status, or Form W–8BEN and documentary evidence establishing non-U.S. status of the individual account holder. For purposes of the preceding sentence, for an account holder to establish non-U.S. status, the account holder will be required to present a non-U.S. passport or other similar evidence of non-U.S. citizenship. If the account is identified as containing only indicia of potential U.S. status described in items 3(iv)-(vi), the FFI shall obtain Form W–9 establishing U.S. status, or Form W–8BEN or documentary evidence establishing non-U.S. status, from the individual account holder. A participating FFI will be entitled to rely on the documentation received from account holders unless it knows or has reason to know that the information contained in such documentation is unreliable or incorrect.

5. The FFI will be required to complete steps one through 3 and request any documentation required by step 4 from each relevant individual account holder within one year of the effective date of the FFI's FFI Agreement. Account holders that have not provided appropriate documentation as of the date that is one year after the date of the request will be classified as recalcitrant account holders from such date until the date on which appropriate documentation is received from the account holder by the participating FFI.

For purposes of applying the above procedures, a participating FFI would be permitted to rely on documentation maintained in an accountholder's files and would be required to obtain additional documentation from an accountholder only where the above-described documentation was not previously collected.

Within two years after the date on which the FFI's FFI Agreement enters into effect, all preexisting individual accounts that were treated under the procedures described above as other than U.S. accounts and that had an average monthly balance (or, if the balance or value is determined less frequently than monthly for purposes of reporting to the account holder, the average of the balance or value as determined for purposes of reporting to the account holder during the year) exceeding $1,000,000 during the year preceding the first year in which the FFI's FFI Agreement enters into effect will be subject to the procedures described in Section III.B.2.b., below, to determine whether such accounts should continue to be treated as other than U.S. accounts, unless the participating FFI has collected, reviewed, and maintained documentation sufficient to establish the U.S. or non-U.S. status of such accounts, and such U.S. or non-U.S. status is reflected in electronically searchable information maintained by the FFI and associated with the account.

Within five years after the date on which the FFI's FFI Agreement enters into effect, all preexisting individual accounts treated as other than U.S. accounts under the procedures described above will be subject to the procedures described in Section III.B.2.b., below, to determine whether such accounts should continue to be treated as other than U.S. accounts, unless the participating FFI has collected, reviewed, and maintained documentary evidence sufficient to establish the U.S. or non-U.S. status of such accounts, and such U.S. or non-U.S. status is reflected in electronically searchable information maintained by the FFI and associated with the account. Future guidance shall also prescribe circumstances under which the procedures described in section III.B.2.a. will be reapplied for accounts that are treated as other than U.S. accounts in step 1 of section III.B.2.a. and that have an average monthly balance exceeding $50,000 in a year subsequent to the first year in which the FFI's FFI Agreement is applied with respect to existing accounts.

A participating FFI will be deemed to have maintained documentation (other than a Form W–8BEN or Form W–9, a copy of which must be retained) if the participating FFI retains a record of the documentary evidence collected and reviewed, noting the type of document, any identification number contained in the document, the place of issuance, and the date of issuance and expiration date, if any.

b. *New Individual Accounts*

New individual accounts are accounts opened by individuals after the date that a participating FFI's FFI Agreement becomes effective. For new individual accounts, the participating FFI will be required to determine whether such accounts are to be treated as U.S. accounts according to the steps described below. For this purpose, new individual accounts will include new account relationships established by individuals holding preexisting individual financial accounts with the FFI. Thus, for example, a custodial account opened after the effective date of the participating FFI's FFI Agreement by an individual that maintains a preexisting depository account at the FFI will be subject to the procedures described below.

1. The FFI may treat a depository account as other than a U.S. account if the aggregate of the opening account balance or value of the new individual financial account, and the average of the month-end balances or values during the preceding calendar year (or, if the balance or value is determined less frequently than monthly for purposes of reporting to the account holder, the average of the balance or value as determined for purposes of reporting to the account holder during the year) of all other depository accounts held by the account holder at such FFI in the preceding calendar year was less than $50,000 (or the equivalent in foreign currency), unless the FFI elects not to apply this step.
2. From among the accounts that are not addressed in step 1, the FFI will categorize all account holders already documented as U.S. persons for other U.S. tax purposes as specified U.S. persons for purposes of chapter 4, and treat those account holders' financial accounts as U.S. accounts for purposes of chapter 4.
3. From among the accounts that are not addressed in step 1 or 2, the FFI will obtain and examine from individuals that are beneficial owners of new individual accounts documentary evidence establishing U.S. or non-U.S. status of individual account holders.

For new individual accounts that are identified as held by U.S. persons in this step, the FFI will obtain Forms W–9 from the individual holders of the accounts.

4. With respect to accounts that are not addressed in step 1 or step 2, and that are not documented as U.S. accounts in step 3, FFIs will examine all other information collected in connection with the new individual financial account (*e.g.*, for purposes of maintaining the account, corresponding with the account holder, or complying with regulatory requirements) to identify indicia of potential U.S. status. Such indicia include: (i) documentation suggesting that account holders are U.S. residents or U.S. citizens; (ii) a U.S. address associated with an account holder of the account (whether a residence address or a correspondence address); (iii) a U.S. place of birth for an account holder of the account; or (iv) any other indicia of potential U.S. status, including an "in care of" address, a "hold mail" address, a P.O. address that is the sole address on file with respect to the account holder, (v) a power of attorney or signatory authority granted to a person with a U.S. address, or (vi) standing instructions to transfer funds to an account maintained in the United States or directions received from a U.S. address. Accounts with indicia of potential U.S. status will be treated as potential U.S. accounts for purposes of step 5 below. All other accounts not addressed in step 1 or step 2, or identified as held by a U.S. person in step 3, shall be treated as other than a U.S. account.
5. For all accounts identified as containing indicia of potential U.S. status in step 4, the FFI will be required to obtain certain documentation, if such documentation has not already been collected, reviewed and maintained by the participating FFI, or treat the account holder as a recalcitrant account holder. In particular, if an account holder is identified as a U.S. resident or citizen in item 4(i), the FFI shall obtain Forms W–9 from all individual account holders identified as U.S. residents or citizens. If the account is identified as containing indicia of potential U.S. status described in item 4(ii) or (iii), the FFI shall obtain Form W–9 establishing U.S. status, or Form W–8BEN and documentary evidence establishing non-U.S. status of the individual account holders. For purposes of the preceding sentence, for an account holder to establish non-U.S. status, the account holder will be required to present a non-U.S. passport or other similar evidence of non-U.S. citizenship. If the account is identified as containing only indicia of potential U.S. status described in item 4(iv)-(vi), the FFI shall obtain Form W–9 establishing U.S. status, or Form W–8BEN or documentary evidence establishing non-U.S. status, from the individual account holder. For this purpose, a Form W–8BEN will not be required, but could be relied on by the FFI. Account holders that do not provide appropriate documentation will be classified as recalcitrant account holders until the date on which appropriate documentation is received from the account holder by the participating FFI. A participating FFI will be entitled to rely on the documentation received from account holders unless it knows or has reason to know that the information contained in such documentation is unreliable or incorrect.
6. An FFI will be required to repeat steps 4 and 5 each time the FFI knows or has reason to know that circumstances affecting the correctness of the classification of an account as a U.S. account have changed.

Future guidance shall also prescribe the period during which the steps described in this section III.B.2.b. must be performed, the default treatment of account holders during that period, and the circumstances under which the procedures described in section III.B.2.b will be reapplied for accounts that are treated as other than U.S. accounts in step 1 of section III.B.2.b. and that have an average monthly balance (or, if the balance or value is determined less frequently than monthly for purposes of reporting to the account holder, the average of the balance or value as determined for purposes of reporting to the account holder during the year) exceeding $50,000 in a year ending after the date on which the account was opened.

3. *Financial Accounts Held by Entities — Identification by Participating FFIs*

a. *Preexisting Entity Accounts*

With respect to financial accounts held by persons other than individuals as of the date that an FFI's FFI Agreement becomes effective, the participating FFI will be required to determine whether such accounts are to be treated as U.S. accounts, accounts of participating FFIs, accounts of deemed-compliant FFIs, accounts of nonparticipating FFIs, accounts of entities described in section 1471(f), accounts of recalcitrant account holders, accounts of excepted NFFEs, accounts of other NFFEs, or other accounts, according to the steps described below.

1. The participating FFI will treat all account holders already identified as U.S. persons for other U.S. tax purposes as U.S. persons for purposes of section 1471. Participating FFIs will permit such entities to provide documentation establishing that they are not specified U.S. persons for purposes of chapter 4. Any U.S. person that does not provide such documentation within one year after the participating FFI's FFI Agreement enters into effect will be classified as a specified U.S. person for purposes of chapter 4 until such documentation is received. Treasury and the IRS also request comments regarding the development of presumptions on which a participating FFI could rely to determine whether a U.S. person is a specified U.S. person.
2. Of the remaining entity account holders, the FFI will identify any entities for which information maintained by the participating FFI in its electronically searchable files indicates that the entity account holder is a U.S. entity (*e.g.*, a place of incorporation in the United States). Such entities will be presumed to be U.S. entities. Participating FFIs will permit such entities to present documentation establishing that they are not U.S. persons, or, if they are U.S. persons, they are not specified U.S. persons for purposes of chapter 4. The FFI will be required

to request such documentation within one year of the effective date of the FFI's FFI Agreement. Any such entity that has not presented such documentation prior to the date that is one year after the date of the FFI's request will be classified as a specified U.S. person for purposes of chapter 4 until such documentation is received. An account holder treated as a specified U.S. person under this step 2 shall be treated as a recalcitrant account holder until the FFI receives the information it is required to report with respect to such account holder.

3. All entity account holders not classified as U.S. persons in step 1 or step 2 will be presumed to be foreign entities.
   a. From among entity account holders that are presumed to be foreign entities, the participating FFI will determine whether the entity's name (or other information readily available to the participating FFI in its electronically searchable files regarding the entity account holder) clearly indicates that the entity is an FFI. If so, the participating FFI will tentatively classify the entity as an FFI.
   b. If an entity account holder is tentatively classified as an FFI in step 3(a), the participating FFI will request that the entity provide the participating FFI with the entity's FFI EIN and certification of its participating FFI status, and upon receipt of the FFI EIN and certification of participating FFI status, treat the entity as a participating FFI for purposes of applying section 1471(a), subject to confirmation with the IRS that the FFI EIN is valid.
   c. If an entity account holder tentatively classified as an FFI in Step 3(a) does not provide a valid FFI EIN and certification of participating FFI status within nine months after the participating FFI's FFI Agreement enters into effect, the participating FFI will, within one year after the participating FFI's Agreement enters into effect, request documentation from the entity indicating whether the entity is a participating FFI, a deemed-compliant FFI, a non-participating FFI, an entity described in section 1471(f), or an NFFE. An entity account holder that does not present such documentation prior to the date that is one year after the date of the FFI's request will be treated as a non-participating FFI from such date until the date on which appropriate documentation is received from the entity account holder by the participating FFI. During the interim period (*i.e.*, prior to the time that the entity account holder is treated as a non-participating FFI), the entity account holder will be considered an excepted NFFE, and its account will be treated as other than a U.S. account, unless the entity is otherwise identified by the IRS on a published list. If the entity is so identified, the entity will be treated as a non-participating FFI. Treasury and the IRS also contemplate requiring participating FFIs to report information regarding the identity of any entity that provides documentation indicating that it is a participating FFI, but that does not provide a valid FFI EIN.

4.
   a. With respect to any entity account holder not treated as a U.S. person after applying steps 1 and 2 or as an FFI after applying step 3, the participating FFI will examine the entity's account file for evidence that the entity is engaged in an active trade or business (other than an FI business). Appropriate evidence in this regard may include statements of business activities, physical assets used in business activities, persons employed in business activities, and receivables and payables related to business activities (such as may be shown on audited financial statements or other business records provided by the account holder). For this purpose, Treasury and the IRS are also considering permitting FFIs to rely in part on information obtained from third-party credit databases. An entity account holder identified in this step as engaged in an active trade or business will be treated as an excepted NFFE and an account of such an entity will be treated as other than a U.S. account for purposes of chapter 4.
   b. The participating FFI will permit entity account holders not treated in step 4(a) as engaged in an active trade or business to present documentation showing or certifying that they are a participating FFI (in which case the procedures of step 3(b) and (c) will apply), a deemed-compliant FFI, a non-participating FFI, an NFFE, or that they are described in an exception under section 1471(f). The participating FFI will be permitted to rely on existing documentary evidence in its account files for this purpose, unless the participating FFI knows or has reason to know that the documentation is unreliable or incorrect. If the participating FFI does not have existing documentary evidence on which it can rely for this purpose, the participating FFI will request documentation as required to show or certify the status of the entity account holder within one year after the participating FFI's FFI Agreement enters into effect. If the entity account holder does not present the documentation required by this step, the entity account holder will be treated as a non-participating FFI from the date that is one year after the date of the FFI's request for documentation until the date appropriate documentation is received from the entity account holder by the participating FFI.
   c. If the documentation provided by the account holder in step 4(b) above indicates that the account holder is an NFFE, the participating FFI must either obtain documentary evidence (or rely on existing documentary evidence in its account files) that the NFFE is an excepted NFFE, or the FFI

must (i) specifically identify each individual, and each other specified U.S. person that has an interest in such entity, either directly or through ownership in one or more other entities, other than through ownership in an excepted NFFE, a participating FFI, a deemed-compliant FFI, or an entity described in section 1471(f), and (ii) if a specified U.S. person is identified in (i), treat the account as a U.S. account and obtain with respect to each such person the documentation that the participating FFI would be required to obtain from such person if such person were a new account holder and report any such specified U.S. person to the IRS. If the participating FFI is unable to obtain the documentation required by this paragraph with respect to a specified U.S. person identified in (i), the account holder will be treated as a recalcitrant account holder from the date that is two years after the date on which the participating FFI's FFI Agreement entered into effect until the date appropriate documentation is received from the account holder by the participating FFI.

A participating FFI will be entitled to rely on the documentation received from entity account holders unless it knows or has reason to know that the information contained in such documentation is unreliable or incorrect. Treasury and the IRS request comments about the level of evidence that should be sufficient to establish under step 4(a) that an entity is engaged in an active trade or business, as well as ways in which step 4(a) can be structured to ensure that it is not subject to abuse.

b. *New Entity Accounts*

For new financial accounts held by persons other than individuals and opened after the date on which the participating FFI's FFI Agreement enters into effect, the participating FFI will be required to determine whether such accounts are to be treated as U.S. accounts, accounts of participating FFIs, accounts of deemed-compliant FFIs, accounts of entities described in section 1471(f), accounts of non-participating FFIs, accounts of recalcitrant account holders, accounts of excepted NFFEs, or accounts of other NFFEs by following procedures similar to the procedures described above with regard to preexisting accounts. However, with respect to new entity accounts, FFIs must determine how to treat such accounts using all information collected by the FFI (*e.g.*, for purposes of opening and maintaining the account, corresponding with the account holder, and complying with regulatory requirements, including anti-money laundering/know-your-customer ("AML/KYC") requirements), regardless of whether such information is available in electronically searchable files. Information collected by the FFI for purposes of opening and maintaining the account, corresponding with the account holder, and complying with regulatory requirements, including AML/KYC requirements would also be treated as known by the FFI for purposes of determining whether the FFI should treat documentation provided by an entity as unreliable or incorrect.

4. *Coordination With Section 1472*

Pursuant to its FFI Agreement, a participating FFI must follow the procedures described in section III.B.3. to determine whether the accounts of its entity account holders are to be treated as U.S. accounts, accounts of participating FFIs, accounts of deemed-compliant FFIs, accounts of non-participating FFIs, accounts of entities described in section 1471(f), accounts of excepted NFFEs, or accounts of NFFEs subject to reporting with respect to their substantial U.S. owners. A participating FFI that makes a withholdable payment to an NFFE account holder will also be a withholding agent for purposes of section 1472. To avoid duplicative documentation, a participating FFI must determine the treatment of its entity account holders under the procedures of section III.B.3. of this Notice, rather than the certification procedures described in section 1472(b), for purposes of applying section 1472 with respect to a withholdable payment to an entity account holder.

C. *USFIs*

To comply with its obligations as a withholding agent under sections 1471 and 1472, a USFI will be required to determine whether to treat entities to which it makes withholdable payments as U.S. persons, participating FFIs, deemed-compliant FFIs, non-participating FFIs, entities described in section 1471(f), excepted NFFEs, or other NFFEs. Where the entities to which a USFI makes withholdable payments are account holders of the USFI, these determinations parallel the determinations that a participating FFI is required to make with respect to its entity account holders. To ensure that those parallel determinations are made in a consistent manner by FFIs and USFIs, Treasury and the IRS will require USFIs to determine whether their foreign entity account holders are NFFEs subject to reporting or withholding under section 1472 or FFIs subject to withholding under section 1471(a) by applying procedures similar to the procedures described in Section III.B.3 of this Notice. A USFI that performs such procedures will not be required to separately request certification under section 1472(b) from its NFFE account holders. Such procedures will apply only with respect to holders of financial accounts as defined in section 1471(d)(2) to which the USFI makes withholdable payments.

1. *Identification of Foreign Entities that Hold Preexisting Financial Accounts*

With respect to withholdable payments made by a USFI to financial accounts opened before January 1, 2013 and held by persons other than individuals, Treasury and the IRS intend to require the USFI to perform the steps described below.

1. The USFI will treat all entity account holders identified as U.S. persons for purposes of chapters 3 or 61 of the Code as U.S. persons for purposes of chapter 4. The remaining entity account holders will be treated as foreign entities for purposes of chapter 4.
2.
    a. For each entity account holder treated as a foreign entity after step 1, the USFI will determine whether the foreign entity's name (or other information readily available to the USFI in its

electronically searchable files regarding the entity account holder) clearly indicates that the foreign entity is an FFI. If so, the USFI will tentatively classify the entity as an FFI.

b. If a foreign entity account holder is tentatively classified as an FFI in step 2(a), the USFI will request that the foreign entity provide the USFI with the foreign entity's certification of its participating FFI status and FFI EIN, and upon receipt of the FFI EIN and certification of participating FFI status, treat the foreign entity as a participating FFI for purposes of applying section 1471(a), subject to confirmation with the IRS that the FFI EIN is valid.

c. If a foreign entity account holder tentatively classified as an FFI in Step 2(a) does not provide a valid FFI EIN by December 31, 2013, the USFI will request documentation from the foreign entity indicating whether the foreign entity is a participating FFI, a deemed-compliant FFI, an entity described in section 1471(f), a non-participating FFI, or an NFFE. Any foreign entity that has not provided such documentation by December 31, 2014, will be classified as a non-participating FFI from such date until the date on which appropriate documentation is received from the entity account holder by the USFI. During the interim period (*i.e.*, prior to the time that the entity account holder is treated as a non-participating FFI), the entity account holder will be considered an excepted NFFE unless the entity is otherwise identified by the IRS on a published list. If the entity is so identified, the entity will be treated as a non-participating FFI. Treasury and the IRS also contemplate requiring USFIs to report information regarding the identity of any entity that provides documentation indicating that it is a participating FFI, but that does not provide a valid FFI EIN.

3.

a. With respect to any entity account holder not treated as a U.S. person after applying step 1 or as an FFI after applying step 2, the FFI will examine the entity's account file for evidence that the entity is engaged in an active trade or business (other than an FI business). Appropriate evidence in this regard may include statements of business activities, physical assets used in business activities, persons employed in business activities, and receivables and payables related to business activities (such as may be shown on audited financial statements or other business records). For this purpose, Treasury and the IRS are also considering permitting USFIs to rely in part on information obtained from third-party credit databases. A foreign entity account holder identified in this step as engaged in an active trade or business will be treated as an excepted NFFE for purposes of chapter 4.

b. USFIs will permit foreign entity account holders not treated in step 3(a) as engaged in an active trade or business to present documentation certifying that they are a participating FFI (in which case the procedures of step 2(b) and (c) will apply), a deemed-compliant FFI, a non-participating FFI, an entity described in section 1471(f), or an NFFE. A USFI will be permitted to rely on existing documentary evidence in its account files for this purpose, unless the USFI knows or has reason to know that the documentation is unreliable or incorrect. Any entity account holder that does not present such documentation by December 31, 2014 will be treated as a non-participating FFI for purposes of chapter 4 from after such date until the date on which appropriate documentation is received from the entity account holder by the USFI.

c. If the documentation provided by the account holder in step 3(b) above indicates that the account holder is an NFFE, the USFI must either obtain documentary evidence (or rely on existing documentary evidence in its account files) that the NFFE is an excepted NFFE or (i) specifically identify each individual and each other specified U.S. person that has an interest in such entity, either directly or through ownership in one or more other entities, other than through ownership in an excepted NFFE, a participating FFI, a deemed-compliant FFI, or an entity described in section 1471(f), and (ii) if a specified U.S. person is identified in (i), obtain with respect to each such person the documentation that the USFI would be required to obtain from such person if such person were a new account holder, and report any such specified U.S. person to the IRS in such manner as will be provided in future guidance. If the USFI is unable to identify such persons or obtain the documentation required by this paragraph with respect to a specified U.S. person identified in (i) by December 31, 2014, the USFI will apply withholding under section 1472(a) from after such date until the date on which appropriate documentation is received from the account holder by the USFI.

A participating FFI will be entitled to rely on the documentation received from entity account holders unless it knows or has reason to know that the information contained in such documentation is unreliable or incorrect.

2. *Identification of New Foreign Entity Accounts*

For financial accounts that are opened at a USFI on or after January 1, 2013 and are held by persons other than individuals (new USFI accounts held by foreign entities), a USFI will be required to determine whether such accounts are to be treated as U.S. accounts, accounts of participating FFIs, accounts of non-participating FFIs, accounts of deemed-compliant FFIs, entities described in section 1471(f), accounts of excepted NFFEs, or accounts of other

NFFEs by following procedures similar to the procedures described in Section III.C.1 above with regard to preexisting USFI accounts held by foreign entities. However, with respect to new USFI accounts held by foreign entities, USFIs must identify foreign entities using all information collected by the USFI (*e.g.*, for purposes of opening and maintaining the account, corresponding with the account holder, and complying with regulatory requirements, including AML/KYC requirements), regardless of whether such information is available in electronically searchable files. Information collected by the USFI for purposes of opening and maintaining the account, corresponding with the account holder, and complying with regulatory requirements, including AML/KYC requirements, would also be treated as known by the USFI for purposes of determining whether the USFI should treat documentation provided by an entity as unreliable or incorrect. Treasury and the IRS request comments regarding appropriate procedures for identifying participating FFIs, deemed-compliant FFIs, non-participating FFIs, entities described in section 1471(f), excepted NFFEs, and other NFFEs from among new account holders of USFIs.

Section IV. Reporting on U.S. Accounts

This section describes the preliminary views of Treasury and the IRS regarding the manner and type of information reporting that FFIs must provide to the IRS annually with respect to their U.S. accounts under an FFI Agreement.

A. *In General*

Section 1471 provides that a participating FFI must report the following information pursuant to an FFI Agreement with respect to each U.S. account:

- the name, address and taxpayer identification number (TIN) of each account holder which is a specified U.S. person;
- in the case of any account holder which is a U.S.-owned foreign entity, the name, address, and TIN of each substantial United States owner of such entity;
- the account number;
- the account balance or value (determined at such time and in such manner as the Secretary may provide); and
- except to the extent provided by the Secretary, the gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide).

The IRS is developing a new form for reporting the information required by section 1471(c). This form will be filed electronically. *See* Section V of this notice for information on anticipated requirements with regard to electronic filing. The account number to be reported with respect to an account may be an actual account number, or, if no account number is used by the FFI, a serial number or other number the FFI assigns to the financial account that is unique and will distinguish the specific account. Treasury and the IRS also intend to issue guidance coordinating the reporting provisions of chapter 4 with other U.S. tax reporting obligations.

B. *Account Balance or Value*

Section 1471(c)(1)(C) requires a participating FFI to report the account balance or value of each U.S. account. Treasury and the IRS intend to issue guidance that will provide that all such amounts must be reported in U.S. dollars. Future guidance will provide the appropriate method for currency translation. With regard to the account balance of deposit and custodial accounts, Treasury and the IRS are considering requiring reporting of the highest of the month-end balances during the year (or, if the balance is determined less frequently than monthly (*e.g.*, quarterly) for purposes of reporting to the account holder, the highest of the balances as determined for purposes of reporting to the account holder during the year). In addition, the FFI will be required to provide additional account-related information (*e.g.*, copies of account statements including monthly or quarterly balances and daily receipts and withdrawals) to the IRS upon request.

In the case of a U.S. account that is an interest in an entity described in section 1471(d)(5)(C), the value of the account may be required to be determined for a number of reasons throughout the year, including for purposes of (i) financial reporting, (ii) determining the compensation of any investment manager of or investment advisor to the FFI, or (iii) reporting to the account holder or determining any distributions or payments to the account holder. Treasury and IRS are considering requiring such a participating FFI to report the highest value of such account during the year, as determined for the purpose that requires the most frequent determination of value by the participating FFI. For example, assume that a participating FFI is required to be valued for two reasons: annually for purposes of reporting to its interest holders, and quarterly for purposes of calculating the compensation of the investment advisor to the FFI. In such a case, the value reported under section 1471(c)(1)(C) would be the highest of the quarterly values determined for purposes of calculating the compensation of the investment advisor.

Comments are requested regarding the above approaches, and regarding other potential approaches that may provide adequate information in a manner that will be administrable by participating FFIs without being subject to manipulation by U.S. account holders. Comments on possible currency translation conventions are requested. Comments on specific situations in which foreign laws may prevent the reporting of the information described above are also requested, along with descriptions of the steps that would be required of a participating FFI (and account holders of U.S. accounts maintained by the FFI) in order to overcome or waive any such restriction.

C. *Gross Receipts and Withdrawals*

Section 1471(c)(1)(D) requires the reporting of gross receipts and gross withdrawals and payments, except to the extent provided otherwise by the Secretary. Treasury and the IRS request comments as to how to minimize burdens on participating FFIs with respect to such reporting.

D. *Section 1471(c)(2) Election*

Section 1471(c)(2) allows a participating FFI to elect to have section 1471(c)(1)(C) or (D) not apply, and instead to report under sections 6041, 6042, 6045, and 6049 as if such FFI were a U.S. person and each holder of a U.S. account that is a specified U.S. person or U.S.-owned

foreign entity were an individual and citizen of the United States. An FFI that makes this election must still comply with section 1471(c)(1)(A) and (B), and thus will also have to report the name, address, and TIN of each account holder which is a specified U.S. person and, in the case of any account holder which is a U.S.-owned foreign entity, the name, address, and TIN of each substantial United States owner of such entity, as well as the relevant account numbers; however, such an electing FFI will not have to report the account balance or value or the gross receipts and gross withdrawals of payments required under section 1471(c)(1)(C) and (D).

The time and manner for making the election and the conditions for meeting the reporting requirements of the election will be addressed in future guidance. Treasury and the IRS request comments regarding whether and in what circumstances a participating FFI should be permitted to make the election with respect to a subset of its accounts without making the election for all of its accounts (for example, whether a participating FFI should be permitted to make the election with respect to accounts held by individuals without requiring that the FFI make the election with respect to accounts held by entities).

E. *Elimination of Duplicative Reporting*

In certain circumstances, the same instrument or interest may give rise to a financial account with respect to more than one FFI. For example, assume a participating FFI (Fund) issues shares that are treated as a financial account under section 1471(d)(2)(C), and such shares are held by another participating FFI (Custodian) on behalf of a specified U.S. person. In that case, the shares owned by the specified U.S. person would (absent an applicable exception) constitute a financial account maintained by Fund and the specified U.S. person's custodial account maintained by Custodian would also be a financial account. Treasury and the IRS are aware that there is concern about whether both Fund and Custodian would be required to report the shares of Fund owned by the specified U.S. person.

Treasury and the IRS believe that, where possible, it is preferable for reporting to be performed by the FFI that is in a direct payment relationship with the account holder. This view is consistent with section 1471(d)(1)(C)(i), which provides that a U.S. account does not include a financial account held by another financial institution that meets the requirements of section 1471(b). Treasury and the IRS intend to issue regulations providing that in the case of a participating FFI that maintains an account of another participating FFI, only the participating FFI that has the more direct relationship with the investor or customer will be required to report the information required under section 1471(c). Thus, in the example in the preceding paragraph, Custodian will be required to report with respect to the custodial account held by the specified U.S. person, and the shares of Fund held by Custodian will not be a U.S. account subject to reporting by Fund. Moreover, in a case in which all of a participating FFI's direct account holders are also participating FFIs, the first-mentioned participating FFI would have no reporting obligations under section 1471(c).

F. *Reporting with Regard to Recalcitrant Accounts*

Treasury and the IRS intend to require a participating FFI to report the number and aggregate value of financial accounts held by recalcitrant account holders and the number and aggregate value of financial accounts held by related or unrelated non-participating FFIs. In addition, Treasury and the IRS intend to require a participating FFI to report the number and aggregate value of financial accounts held by recalcitrant account holders that have U.S. indicia (as described in Section III.B.2.b. step 4 above or in future guidance).

Section V. Request for Specific Comments

A. *Verification Requirements Applicable to Participating FFIs*

Under section 1471(b)(1)(B), as part of an FFI Agreement, a participating FFI agrees to comply with such verification procedures as the Secretary may require with respect to the identification of U.S. accounts. Treasury and the IRS consider effective verification procedures to be crucial to ensuring compliance with chapter 4. Treasury and the IRS recognize, however, that the compliance gains associated with the implementation of verification procedures must be balanced against the costs that such procedures would impose on FFIs.

Treasury and the IRS understand that for compliance purposes in connection with various countries' AML/KYC and similar laws, regulators typically place some degree of reliance on verification procedures and reviews performed by public accountants engaged by financial institutions or by the internal audit function of financial institutions. Treasury and the IRS also understand that, unlike the procedures commonly used by external auditors to verify compliance with QI agreements, these verification procedures and reviews are performed under engagements that are not agreed-upon procedures.

Treasury and the IRS request comments about the procedures performed by public accountants or other external auditors when conducting an AML/KYC audit or similar engagement, including information about the objectives of such engagements, the types of procedures performed, and the types of reports issued as part of such engagements. In addition, Treasury and the IRS are exploring the possibility of relying in some circumstances on written certifications by high-level management employees of the applicable financial institution regarding the steps taken to comply with chapter 4. Treasury and IRS request comments on the information and representations that should be included in such certifications and the extent to which public accountants or other external auditors rely on written certifications of compliance provided by officers or other responsible management employees of the applicable financial institution in the course of AML/KYC audits or similar engagements. Treasury and the IRS request comments concerning the extent to which the format of reports associated with such engagements could be appropriately modified to further compliance with chapter 4. Treasury and the IRS further request comments as to the extent to which public accountants would be able to perform, consistent with their attestation or other accounting standards, verification procedures and reporting with respect to FFIs under engagements that are not agreed-upon procedures.

B. *Treatment of Passthru Payments*

As part of an FFI Agreement, an FFI must deduct and withhold a tax equal to 30 percent of (1) any passthru payment that is made by such institution to a recalcitrant account holder or a non-participating FFI, and (2) in the case of a passthru payment made by such institution to a participating FFI that has elected under section 1471(b)(3) to be withheld upon with respect to such payment, so much of such payment as is allocable to accounts held by recalcitrant account holders or non-participating FFIs. Section 1471(b)(1)(D). Section 1471(d)(7) defines "passthru payment" to mean any withholdable payment or any other payment to the extent attributable to a withholdable payment.

One of the purposes of requiring withholding on passthru payments is to permit an FFI that has entered into an FFI Agreement to continue to remain in compliance with its agreement, even if some of its account holders have failed to provide the FFI with the information necessary for the FFI to properly determine whether the accounts are U.S. accounts and perform the required reporting, or, in the case of account holders that are FFIs, have failed to enter into an FFI Agreement. The rule also encourages FFIs that do not invest directly in the United States or that do not hold U.S assets that produce withholdable payments, but which benefit from investments that produce payments that are attributable to withholdable payments, to enter into an FFI Agreement.

Treasury and the IRS have received comments concerning the potential difficulties that may arise for FFIs in trying to determine whether a payment is "attributable to" a withholdable payment. Comments are requested as to methods that a participating FFI could use to determine whether payments it makes are attributable to withholdable payments, including any associated information reporting that may be necessary, and which take into account the administrative burden imposed by any such approach.

C. *Election to be Withheld Upon*

Under section 1471(b)(3), subject to any requirements imposed by the Secretary, a participating FFI may elect to have a withholding agent withhold on withholdable payments or passthru payments made to it, rather than act as a withholding agent for passthru payments it makes to its account holders. If a participating FFI meets the requirements the Secretary may provide and so elects, it will be withheld upon to the extent withholdable payments or passthru payments made to it are allocable to accounts that are held by recalcitrant account holders or non-participating FFIs. As part of the election, a participating FFI must agree to notify the withholding agent of its election to be withheld upon and provide such other information as may be necessary for the withholding agent to determine the appropriate amount to deduct and withhold from withholdable payments or passthru payments it makes to the electing FFI. The electing FFI must also agree to a waiver of any right under any treaty of the United States with respect to any amount deducted and withheld pursuant to the election. To the extent provided by the Secretary, the election to be withheld upon may be made with respect to certain classes or types of accounts of the participating FFI.

Treasury and the IRS have received comments regarding the administrative challenges that may be raised by an election under section 1471(b)(3). Comments are requested as to the appropriate scope of such an election. In particular, comments are requested as to the types of financial accounts for which such an election should be available. In addition, comments are requested as to the type of information reporting an electing FFI would need to provide to a withholding agent so that the appropriate amount of tax could be deducted and withheld from any withholdable payments or other passthru payments made to the electing FFI.

D. *Sanctions With Respect to Recalcitrant Account Holders*

As noted above, participating FFIs are required to withhold tax (or in the case of an FFI that elects to be withheld upon, to provide a withholding agent with information necessary to determine appropriate withholding) with respect to passthru payments made to recalcitrant account holders. Withholding with respect to recalcitrant account holders is intended to provide relief for participating FFIs that would not otherwise be able to collect the information required to comply with their obligations under their FFI Agreements. It should not, however, become a permanent substitute for collecting and reporting information with respect to U.S. accounts. Treasury and the IRS request comments on what measures should be taken to address long-term recalcitrant accounts, including whether, and in what circumstances, Treasury and the IRS should consider terminating FFI Agreements due to the number of recalcitrant account holders remaining after a reasonable period of time.

E. *FFIs Subject to Restrictions Prohibiting U.S. Account Holders*

Treasury and the IRS have received comments stating that for purposes of complying with certain legal requirements, some foreign collective investment vehicles have procedures and legal restrictions that prohibit the sale of their interests to certain U.S. persons, and include or will include language to that effect in their prospectuses and application documents. Similarly, in cases in which interests in such vehicles are held by intermediaries or distributors that maintain direct account relationships with the beneficial owners in such vehicles, applicable distribution or similar agreements contain covenants and representations that prohibit the sale of such interests to U.S. persons.

Finally, it has been represented that in certain jurisdictions, AML/KYC laws support compliance with these prohibitions because they apply broadly to all brokers and distributors in the intermediation chain to require the identification of beneficial owners (including certain U.S. persons) investing in such vehicles.

Treasury and the IRS are considering whether, under the standard set forth in section 1471(b)(2)(A), the types of legal requirements and arrangements described above, potentially in connection with certain additional requirements, may provide a basis to treat such institutions as meeting the requirements of section 1471(b). Treasury and the IRS thus request further comments on the following:

1. specific information about the applicable laws and regulations that may result in an investment vehicle's determination to prohibit sales of its interests to U.S. persons;

2. the categories of investment vehicles that may be covered by such laws and regulations;
3. examples of the distribution or similar agreements that prohibit sales of interests to U.S. persons;
4. information regarding the legally binding nature of such prohibitions and the penalties applicable to a violation of such prohibitions;
5. the extent to which the AML/KYC laws used to enforce such a prohibition would apply in identifying U.S. persons (as defined for U.S. tax purposes) that may invest in such vehicles, directly or through ownership in one or more other entities;
6. the extent to which purchases of interests by non-participating FFIs would be treated as unsuitable investments and the extent to which and mechanisms by which non-participating FFIs could be prohibited from purchasing such interests; and
7. approaches that would allow Treasury and the IRS to verify or otherwise ensure compliance with such prohibitions.

Treasury and the IRS are also considering whether such requirements or similar factors are an appropriate basis for applying section 1471(b)(2)(A) to other types of investment vehicles or FFIs.

F. *Electronic Filing Requirements for Financial Institutions*

Section 522 of the Act amends section 6011(e) to the Code to permit the Secretary to require filing on magnetic media (electronic filing) by financial institutions as defined in section 1471(d)(5) with respect to tax for which such institutions are liable under chapter 3 and chapter 4 of the Code, without regard to the general rule under section 6011(e)(2) that limits the authority of the Secretary to require electronic filing to persons required to file at least 250 returns during the calendar year.

Treasury and the IRS consider the receipt of electronic filings by financial institutions in lieu of paper filings to be critical to chapter 3 and chapter 4 compliance efforts. As a result, Treasury and the IRS intend to issue regulations that would require all or most financial institutions to electronically file their returns with respect to tax for which such institutions are liable under chapter 3 and chapter 4 of the Code. Treasury and the IRS anticipate that this requirement would impact many existing filers. To provide sufficient time for financial institutions to comment regarding the implementation of this requirement and to coordinate the effective date for this requirement with the general effective date of chapter 4, Treasury and the IRS intend to require electronic filings with regard to tax for which financial institutions are liable under chapter 3 and chapter 4 of the Code beginning with returns filed for taxable years ending after December 31, 2012.

G. *Application of Chapter 4 by U.S. Withholding Agents Other than USFIs*

Treasury and the IRS contemplate permitting U.S. withholding agents other than USFIs to rely on a foreign entity's certification as to its classification for chapter 4 purposes, absent reason to know that such certification is unreliable or incorrect. These requirements would also apply with respect to withholdable payments made by FFIs and USFIs to NFFEs that are not holders of financial accounts maintained by the financial institution. Treasury and IRS request comments on the form of such certifications, their renewal provisions, and circumstances under which a withholding agent should not be required to solicit such certifications from certain classes of persons or with respect to certain classes of payments, such as arm's-length payments made for goods or services in the ordinary course of the withholding agent's trade or business.

Treasury and the IRS also anticipate providing an exception in guidance to the withholding required under section 1472 for payments made to an NFFE engaged in an active trade or business by withholding agents other than financial institutions. Comments are requested regarding the appropriateness of such an exception, how a withholding agent may determine whether an NFFE is engaged in an active trade or business, and other exceptions to withholding under section 1472 that may be appropriate.

H. *Potential Modifications to Chapter 4 Requirements Based on Availability of Information From Other Sources*

In some cases, information required to be collected and reported by FFIs under chapter 4 may already be reported to the IRS, or may otherwise be readily available to the IRS through other means. Treasury and the IRS intend to consider approaches that will help minimize the burden on participating FFIs. For example, Treasury and the IRS are considering whether to exempt a participating FFI from the obligation to perform withholding on passthru payments to individual recalcitrant account holders where reporting by the participating FFI to the IRS is sufficient to permit the IRS to obtain information about the identities of those recalcitrant account holders through an information exchange request to a foreign jurisdiction. Treasury and the IRS solicit comments on possible approaches to reduce the burden imposed on participating FFIs by chapter 4.

REQUESTS FOR PUBLIC COMMENT

This notice requests public comments regarding certain priority issues identified for forthcoming guidance on the application of chapter 4 of the Code.

Written comments should be sent to: CC:PA:LPD:PR (NOT–121556–10), 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 (NOT–121556–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *Notice.Comments@irscounsel.treas.gov* (NOT–121556–10). Please insert "Notice 2010–60" in the subject line of any electronic communications.

All comments will be available for public inspection and copying. Due to the compressed timeline for issuing guidance in advance of the effective date of chapter 4, this notice solicits written comments from affected persons by November 1, 2010.

DRAFTING INFORMATION

The principal author of this notice is John Sweeney of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Kay Holman at (202) 622–3840 (not a toll-free call).

Part IV. Items of General Interest

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

Announcement 2010–55

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

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on September 7, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

The Buyer's Fund, Inc.
Salt Lake City, UT

Unicorn Development Corporation
Saint Joseph, MI

Ameri-Home Foundation, Inc.
Lenexa, KS

Credit Counseling Bureau of San Diego County
San Diego, CA

Exegetical Institute, Inc.
Kingsland, GA

Family Home Foundation, Inc.
Orem, UT

Home Downpayment Gift Foundation, Inc.
Washington, DC

Xelan Foundation, Inc.
Tampa, FL

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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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2010–1 through 2010–26 is in Internal Revenue Bulletin 2010–26, dated June 28, 2010.

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