Internal Revenue
bulletin

Bulletin No. 2011-18
May 2, 2011

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 2011–32, page 737.

Japan earthquake and tsunami in 2011. This notice designates the Japan earthquake and tsunami occurring in March 2011 as a qualified disaster for purposes of section 139 of the Code.

Rev. Proc. 2011–22, page 737.

This procedure provides a safe harbor method of accounting for determining the recovery periods for depreciation of certain tangible assets used by wireless telecommunications carriers. The procedure also explains how a taxpayer may obtain automatic consent from the Commissioner of Internal Revenue to change to the safe harbor method of accounting provided. Rev. Proc. 2011–14 modified and amplified.

Rev. Proc. 2011–27, page 740.

This procedure provides two alternative safe harbor approaches that taxpayers may use to determine whether expenditures to maintain, replace, or improve wireline network assets must be capitalized under section 263(a) of the Code: a network asset maintenance allowance method or a units of property method. This procedure also provides procedures for obtaining automatic consent to change to either safe harbor method. A companion revenue procedure (Rev. Proc. 2011–28) provides similar safe harbor approaches that may be used for wireless network assets. Rev. Proc. 2011–14 modified.

Rev. Proc. 2011–28, page 743.

This procedure provides two alternative safe harbor approaches that taxpayers may use to determine whether expenditures to maintain, replace, or improve wireless network assets must be capitalized under section 263(a) of the Code: a network asset maintenance allowance method or a units of property method. This procedure also provides procedures for obtaining automatic consent to change to either safe harbor method. A companion revenue procedure (Rev. Proc. 2011–27) provides similar safe harbor approaches that may be used for wireline network assets. Rev. Proc. 2011–14 modified.

Rev. Proc. 2011–29, page 746.

This procedure provides a safe harbor election for allocating success-based fees paid in business acquisitions or reorganizations described in regulations section 1.263(a)–5(e)(3). In lieu of maintaining the documentation required by section 1.263(a)–5(f), this safe harbor permits electing taxpayers to treat 70 percent of the success-based fee as an amount that does not facilitate the transaction. The remaining portion of the fee must be capitalized as an amount that facilitates the transaction.

Announcement 2011–28, page 748.

This announcement provides notice of a public hearing on proposed regulations relating to the payment of rewards under section 7623(a) of the Code and awards under section 7623(b). The guidance is necessary to clarify the definition of proceeds of amounts collected and collected proceeds under section 7623. This regulation provides needed guidance to the general public as well as officers and employees of the IRS who review claims under section 7623. A public hearing is scheduled for May 11, 2011.

(Continued on the next page)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

ADMINISTRATIVE

T.D. 9519, page 734.
Final regulations under section 7811 of the Code relate to the issuance of taxpayer assistance orders.

T.D. 9520, page 730.
Final regulations under section 6323 of the Code provide rules relating to the validity and priority of the Federal tax lien against certain persons.

Announcement 2011–29, page 748.
This announcement reinstates the enrollment renewal period under section 10.6(d) of the regulations governing practice before the IRS, Treasury Department Circular No. 230, for enrolled agents whose social security number or tax identification numbers end in 4, 5, or 6.

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

Section 167.—Depreciation

A safe harbor method of accounting is provided for determining the recovery periods for depreciation of certain tangible assets used by wireless telecommunications carriers. The revenue procedure also explains how a taxpayer may obtain automatic consent from the Commissioner of Internal Revenue to change to the safe harbor method of accounting provided. See Rev. Proc. 2011-22, page 737.

Section 168.—Accelerated Cost Recovery System

A safe harbor method of accounting is provided for determining the recovery periods for depreciation of certain tangible assets used by wireless telecommunications carriers. The revenue procedure also explains how a taxpayer may obtain automatic consent from the Commissioner of Internal Revenue to change to the safe harbor method of accounting provided. See Rev. Proc. 2011-22, page 737.

Section 263.—Capital Expenditures

Two alternative safe harbor approaches are provided that taxpayers may use to determine whether expenditures to maintain, replace, or improve wireline network assets must be capitalized under section 263(a) of the Internal Revenue Code: a network asset maintenance allowance method or a units of property method. A companion revenue procedure (Rev. Proc. 2011–28) provides similar safe harbor approaches that may be used for wireless network assets. See Rev. Proc. 2011-27, page 740.

Two alternative safe harbor approaches are provided that taxpayers may use to determine whether expenditures to maintain, replace, or improve wireless network assets must be capitalized under section 263(a) of the Internal Revenue Code: a network asset maintenance allowance method or a units of property method. A companion revenue procedure (Rev. Proc. 2011–27) provides similar safe harbor approaches that may be used for wireline network assets. See Rev. Proc. 2011-28, page 743.

A safe harbor method of accounting is provided for allocating success-based fees paid in business acquisitions or reorganizations described in regulations section 1.263(a)–5(e)(3). In lieu of maintaining the documentation required by section 1.263(a)–5(f), this safe harbor permits electing taxpayers to treat 70 percent of the success-based fee as an amount that does not facilitate the transaction. The remaining portion of the fee must be capitalized as an amount that facilitates the transaction. See Rev. Proc. 2011-29, page 746.

Section 6323.—Validity and Priority Against Certain Persons

26 CFR 301.6323(b)–1: Protection for certain interests even though notice filed.

T.D. 9520

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Withdrawal of Regulations Related to Validity and Priority of Federal Tax Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations related to the validity and priority of the Federal tax lien against certain persons under section 6323 of the Internal Revenue Code (the Code). The final regulations update the corresponding Treasury Regulations to reflect changes in the law and in IRS practice.

DATES: *Effective Date:* These regulations are effective on April 4, 2011.

Applicability Date: These regulations apply to any notice of Federal tax lien filed on or after April 4, 2011.

FOR FURTHER INFORMATION CONTACT: Debra A. Kohn at (202) 622–3600 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations that amend the Procedure and Administration Regulations (26 CFR part 301) under section 6323 of the Code. If any person liable for tax neglects or refuses to pay after demand, the amount of that tax is a lien in favor of the United States against all property and rights to property of such person under section 6321. Section 6323 provides that a Federal tax lien is only valid against certain persons if a notice of Federal tax lien (NFTL) is filed and addresses generally the validity and priority of the Federal tax lien against such persons. Section 6323(b) and (c) addresses the protection of certain interests even though an NFTL has been filed. Section 6323(f) prescribes the place for filing and the form of an NFTL. Section 6323(g) addresses the refiling of an NFTL. Section 6323(h) contains definitions of certain terms used throughout section 6323.

Since 1976, there have been numerous amendments to section 6323 that are not reflected in the existing regulations. There have also been several changes to IRS practice that thus far have not been reflected in the regulations. On April 17, 2008, a notice of proposed rulemaking (REG–141998–06, 2008–1 C.B. 911) to reflect these changes in law and practice was published in the **Federal Register** (73 FR 20877–01). No comments were received and no public hearing was requested or held. Accordingly, in this Treasury Decision, the proposed regulations are adopted substantially without change with the exception of one revision described in this preamble.

Explanation of Revision

Section 301.6323(g)–1(a) sets forth general principles pertaining to refiling NFTLs. Most NFTLs now contain a certificate of release that automatically becomes effective on the date prescribed in the NFTL, which is the date the required refiling period ends. Therefore, if an NFTL that contains a certificate of release is not timely refiled in each jurisdiction where it was originally filed, the lien self-releases and is extinguished in all jurisdictions. See IRC §6325(f)(1)(A). The extinguishment of the lien invalidates NFTLs filed in other jurisdictions and requires the IRS to file certificates of revocation, as well as new NFTLs, in each

jurisdiction where NFTLs were previously filed.

The proposed regulations contemplated amending §301.6323(g)–1(a)(3) to provide generally that, with respect to an NFTL that includes a certificate of release, failure to timely refile the NFTL in any jurisdiction where it was originally filed extinguishes the lien and renders the NFTL ineffective with respect to property that is the subject matter of a suit to which the United States is a party that is commenced before the required filing period expires, and property that has been levied upon by the United States before the refiling period expires. Further consideration led to the determination that failure to timely refile the NFTL should not render the NFTL ineffective under these circumstances. Accordingly, the final regulations provide that neither failure to timely refile the NFTL, nor the release of the lien, shall alter or impair any right of the United States to property or its proceeds that is the subject of a levy or judicial proceeding commenced prior to the end of the refiling period or the release of the lien, except to the extent that a person acquires an interest in the property for adequate consideration after the commencement of the proceeding and does not have notice of, and is not bound by, the outcome of the proceeding.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Debra A. Kohn of the Office of the Associate Chief Counsel (Procedure and Administration).

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.6323(b)–1 is amended as follows:

1. Paragraph (d)(1) is revised.

2. Paragraph (d)(3) *Example 1* and *3* are revised.

3. Paragraphs (g)(1) and (g)(2) *Example 1*, *2*, and *3* are revised.

4. Paragraphs (i)(1)(iii) and (j) are revised.

The revisions read as follows:

§301.6323(b)–1 Protection for certain interests even though notice filed.

* * * * *

(d) *Personal property purchased in casual sale*—(1) *In general.* Even though a notice of lien imposed by section 6321 is filed in accordance with §301.6323(f)–1, the lien is not valid against a purchaser (as defined in §301.6323(h)–1(f)) of household goods, personal effects, or other tangible personal property of a type described in §301.6334–1 (which includes wearing apparel, school books, fuel, provisions, furniture, arms for personal use, livestock, and poultry (whether or not the seller is the head of a family); and books and tools of a trade, business, or profession (whether or not the trade, business, or profession of the seller)), purchased, other than for resale, in a casual sale for less than $1,380, effective for 2010 and adjusted each year based on the rate of inflation (excluding interest and expenses described in §301.6323(e)–1).

* * * * *

(3) * * *

Example 1. A, an attorney's widow, sells a set of law books for $200 to B, for B's own use. Prior to the sale a notice of lien was filed with respect to A's delinquent tax liability in accordance with §301.6323(f)–1. B has no actual notice or knowledge of the tax lien. In addition, B does not know that the sale is one of a series of sales. Because the sale is a casual sale for less than $1,380 and involves books of a profession (tangible personal property of a type described in §301.6334–1, irrespective of the fact that A has never engaged in the legal profession), the tax lien is not valid against B even though a notice of lien was filed prior to the time of B's purchase.

* * * * *

Example 3. In an advertisement appearing in a local newspaper, G indicates that he is offering for sale a lawn mower, a used television set, a desk, a refrigerator, and certain used dining room furniture. In response to the advertisement, H purchases the dining room furniture for $200. H does not receive any information which would impart notice of a lien, or that the sale is one of a series of sales, beyond the information contained in the advertisement. Prior to the sale a notice of lien was filed with respect to G's delinquent tax liability in accordance with §301.6323(f)–1. Because H had no actual notice or knowledge that substantially all of G's household goods were being sold or that the sale is one of a series of sales, and because the sale is a casual sale for less than $1,380, H does not purchase the dining room furniture subject to the lien. The household goods are of a type described in §301.6334–1(a)(2) irrespective of whether G is the head of a family or whether all such household goods offered for sale exceed $8,250 in value.

* * * * *

(g) *Residential property subject to a mechanic's lien for certain repairs and improvements*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with §301.6323(f)–1, the lien is not valid against a mechanic's lienor (as defined in §301.6323(h)–1(b)) who holds a lien for the repair or improvement of a personal residence if —

(i) The residence is occupied by the owner and contains no more than four dwelling units; and

(ii) The contract price on the prime contract with the owner for the repair or improvement (excluding interest and expenses described in §301.6323(e)–1) is not more than $6,890, effective for 2010 and adjusted each year based on the rate of inflation.

(iii) For purposes of paragraph (g)(1)(ii) of this section, the amounts of subcontracts under the prime contract with the owner are not to be taken into consideration for purposes of computing the $6,890 prime contract price. It is immaterial that the notice of tax lien was filed before the contractor undertakes his work or that he knew of the lien before undertaking his work.

(2) * * *

Example 1. A owns a building containing four apartments, one of which he occupies as his personal residence. A notice of lien which affects the building is filed in accordance with §301.6323(f)–1. Thereafter, A enters into a contract with B in the amount of $800, which includes labor and materials, to repair the roof of the building. B purchases roofing shingles from C for $300. B completes the work and A fails to pay B the agreed amount. In turn, B fails to pay C for the shingles. Under local law, B and C acquire mechanic's liens on A's building. Because the contract price on the prime contract with A is not more than $6,890 and under local law B and C acquire mechanic's liens on A's building, the liens of B and C have priority over the Federal tax lien.

Example 2. Assume the same facts as in *Example 1*, except that the amount of the prime contract between A and B is $7,100. Because the amount of the prime contract with the owner, A, is in excess of $6,890, the tax lien has priority over the entire amount of each of the mechanic's liens of B and C, even though the amount of the contract between B and C is $300.

Example 3. Assume the same facts as in *Example 1*, except that A and B do not agree in advance upon the amount due under the prime contract but agree that B will perform the work for the cost of materials and labor plus 10 percent of such cost. When the work is completed, it is determined that the total amount due is $850. Because the prime contract price is not more than $6,890 and under local law B and C acquire mechanic's liens on A's residence, the liens of B and C have priority over the Federal tax lien.

* * * * *

(i) * * *

(1)

* * *

(iii) After the satisfaction of a levy pursuant to section 6332(b), unless and until the Internal Revenue Service delivers to the insuring organization a notice (for example, another notice of levy, a letter, etc.) executed after the date of such satisfaction, that the lien exists.

* * * * *

(j) *Effective/applicability date*. This section applies to any notice of Federal tax lien filed on or after April 4, 2011.

Par. 3. Section 301.6323(c)–2 is amended as follows:

1. Paragraph (d) *Example 1*, *2*, *3*, *4*, and *5* is revised.

2. Paragraph (e) is added.

The revisions and addition read as follows:

§301.6323(c)–2 Protection for real property construction or improvement financing agreements.

* * * * *

(d) * * *

Example 1. A, in order to finance the construction of a dwelling on a lot owned by him, mortgages the property to B. The mortgage, executed January 4, 2006, includes an agreement that B will make cash disbursements to A as the construction progresses. On February 1, 2006, in accordance with §301.6323(f)–1, a notice of lien is filed and recorded in the public index with respect to A's delinquent tax liability. A continues the construction, and B makes cash disbursements on June 15, 2006, and December 15, 2006. Under local law B's security interest arising by virtue of the disbursements is protected against a judgment lien arising February 1, 2006 (the date of tax lien filing) out of an unsecured obligation. Because B is the holder of a security interest coming into existence by reason of cash disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance the construction of real property, and because B's security interest is protected, under local law, against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, B's security interest has priority over the tax lien.

Example 2. (i) C is awarded a contract for the demolition of several buildings. On March 3, 2004, C enters into a written agreement with D which provides that D will make cash disbursements to finance the demolition and also provides that repayment of the disbursements is secured by any sums due C under the contract. On April 1, 2004, in accordance with §301.6323(f)–1, a notice of lien is filed with respect to C's delinquent tax liability. With actual notice of the tax lien, D makes cash disbursements to C on August 13, September 13, and October 13, 2004. Under local law D's security interest in the proceeds of the contract with respect to the disbursements is entitled to priority over a judgment lien arising on April 1, 2004 (the date of tax lien filing) out of an unsecured obligation.

(ii) Because D's security interest arose by reason of disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance a contract to demolish real property, and because D's security interest is valid under local law against a judgment lien arising as of the time of tax lien filed out of an unsecured obligation, the tax lien is not valid with respect to D's security interest in the proceeds of the demolition contract.

Example 3. Assume the same facts as in *Example 2* and, in addition, assume that, as further security for the cash disbursements, the March 3, 2004, agreement also provides for a security interest in all of C's demolition equipment. Because the protection of the security interest arising from the disbursements made after tax lien filing under the agreement is limited under section 6323(c)(3) to the proceeds of the demolition contract and because, under the circumstances, the security interest in the equipment is not otherwise protected under section 6323, the tax lien will have priority over D's security interest in the equipment.

Example 4. (i) On January 3, 2006, F and G enter into a written agreement, whereby F agrees to provide G with cash disbursements, seed, fertilizer, and insecticides as needed by G, in order to finance the raising and harvesting of a crop on a farm owned by G. Under the terms of the agreement F is to have a security interest in the crop, the farm, and all other property then owned or thereafter acquired by G. In accordance with §301.6323(f)–1, on January 10, 2006, a notice of lien is filed and recorded in the public index with respect to G's delinquent tax liability. On March 3, 2006, with actual notice of the tax lien, F makes a cash disbursement of $5,000 to G and furnishes him seed, fertilizer, and insecticides having a value of $10,000. Under local law F's security interest, coming into existence by reason of the cash disbursement and the furnishing of goods, has priority over a judgment lien arising January 10, 2006 (the date of tax lien filing and recording in the public index) out of an unsecured obligation.

(ii) Because F's security interest arose by reason of a disbursement (including the furnishing of goods) made under a written agreement which was entered into before tax lien filing and which constitutes an agreement to finance the raising or harvesting of a farm crop, and because F's security interest is valid under local law against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to F's security interest in the crop even though a notice of lien was filed before the security interest arose. Furthermore, because the farm is property subject to the tax lien at the time of tax lien filing, F's security interest with respect to the farm also has priority over the tax lien.

Example 5. Assume the same facts as in *Example 4* and in addition that on October 2, 2006, G acquires several tractors to which F's security interest attaches under the terms of the agreement. Because the tractors are not property subject to the tax lien at the time of tax lien filing, the tax lien has priority over F's security interest in the tractors.

(e) *Effective/applicability date*. This section applies with respect to any notice of Federal tax lien filed on or after April 4, 2011.

Par. 4. Section 301.6323(f)–1 is amended as follows:

1. Paragraph (d)(2) is revised.

2. Paragraph (f) is added.

The revision and addition read as follows:

§301.6323(f)–1 Place for filing notice; form.

* * * * *

(d) * * *

(2) *Form 668 defined*. The term *Form 668* means either a paper form or a form transmitted electronically, including a form transmitted by facsimile (fax) or electronic mail (e-mail). A Form 668 must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose regardless of the method used to file the notice of Federal tax lien.

* * * * *

(f) *Effective/applicability date*. This section applies with respect to any notice

of Federal tax lien filed on or after April 4, 2011.

Par. 5. Section 301.6323(g)–1 is amended as follows:

1. Paragraphs (a)(1), (a)(3) introductory text, (a)(3)(i), and (a)(3)(ii), (a)(4), (b)(3) introductory text, (b)(3) *Example 1*, and (b)(3) *Example 5* are revised.

2. The undesignated text following paragraph (a)(3)(ii) is removed.

3. Paragraph (c)(1) is revised.

4. Paragraph (c)(2) is removed.

5. Paragraph (c)(3) is redesignated as paragraph (c)(2) and revised.

6. Paragraph (d) is added.

The revisions and additions read as follows:

§301.6323(g)–1 Refiling of notice of tax lien.

(a) *In general*—(1) *Requirement to refile*. In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (b) of this section during the required refiling period (described in paragraph (c) of this section). If two or more notices of lien are filed with respect to a particular tax assessment, and each notice of lien contains a certificate of release that releases the lien when the required refiling period ends, the failure to comply with the provisions of paragraphs (b)(1)(i) and (c) of this section in respect to one of the notices of lien releases the lien and renders ineffective the refiling of any other notice of lien.

* * * * *.

(3) *Effect of failure to refile*.—If the Internal Revenue Service fails to refile a notice of lien in the manner described in paragraphs (b) and (c) of this section, the notice is not effective, after the expiration of the required refiling period, as against any person described in section 6323(a), without regard to when the interest of the person in the property subject to the lien was acquired. If a notice of lien contains a certificate of release that provides that the lien is released at the end of the required refiling period unless the notice of lien is refiled, and the notice of lien is not refiled, then the lien is extinguished and the notice of lien is ineffective.

(i) However, neither the failure to refile before the expiration of the refiling period, nor the release of the lien, shall alter or impair any right of the United States to property or its proceeds that is the subject of a levy or judicial proceeding commenced prior to the end of the refiling period or the release of the lien, except to the extent that a person acquires an interest in the property for adequate consideration after the commencement of the proceeding and does not have notice of, and is not bound by, the outcome of the proceeding.

(ii) If a suit or levy referred to in the preceding sentence is dismissed or released and the property is subject to the lien at such time, a notice of lien with respect to the property is not effective after the suit or levy is dismissed or released unless refiled during the required refiling period.

(4) *Filing of new notice*. If a notice of lien is not refiled, and the notice of lien contains a certificate of release that automatically releases the lien when the required refiling period ends, the lien is released as of that date and is no longer in existence. The Internal Revenue Service must revoke the release before it can file a new notice of lien. This new filing must meet the requirements of section 6323(f) and §301.6323(f)–1 and is effective from the date on which such filing is made.

(b) * * *

(3) *Examples*. The following examples illustrate the provisions of this section:

Example 1. A, a delinquent taxpayer, is a resident of State M and owns real property in State N. In accordance with §301.6323(f)–1, notices of lien are filed in States M and N. The notices of lien contain certificates of release that release the lien at the end of the required refiling period. In order to continue the effect of the notice of lien filed in either M or N, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in M as well as with the appropriate office in N.

* * * * *

Example 5. D, a delinquent taxpayer, is a resident of State M and owns real property in States N and O. In accordance with §301.6323(f)–1, the Internal Revenue Service files notices of lien in M, N, and O States. Nine years and 6 months after the date of the assessment shown on the notice of lien, D establishes his residence in P, and at that time the Internal Revenue Service receives from D a notification of his change in residence in accordance with the provisions of paragraph (b)(2) of this section. On a date which is 9 years and 7 months after the date of the assessment shown on the notice of lien, the Internal Revenue Service properly refiles notices of lien in M, N, and O which refilings are sufficient to continue the effect of each of the notices of lien. The Internal Revenue Service is not required to file a notice of lien in P because D did not notify the Internal Revenue Service of his change of residence to P more than 89 days prior to the date each of the refilings in M, N, and O was completed.

* * * * *

(c) *Required refiling period*—(1) *In general*. For the purpose of this section, except as provided in paragraph (c)(2) of this section, the term *required refiling period* means—

(i) The 1-year period ending 30 days after the expiration of 10 years after the date of the assessment of the tax; and

(ii) The 1-year period ending with the expiration of 10 years after the close of the preceding required refiling period for such notice of lien.

(2) *Examples*. The following examples illustrate the provisions of this paragraph:

Example 1. On March 10, 1998, an assessment of tax is made against B, a delinquent taxpayer, and a lien for the amount of the assessment arises on that date. On July 10, 1998, in accordance with §301.6323(f)–1, a notice of lien is filed. The notice of lien filed on July 10, 1998, is effective through April 9, 2008. The first required refiling period for the notice of lien begins on April 10, 2007, and ends on April 9, 2008. A refiling of the notice of lien during that period will extend the effectiveness of the notice of lien filed on July 10, 1998, through April 9, 2018. The second required refiling period for the notice of lien begins on April 10, 2017, and ends on April 9, 2018.

Example 2. Assume the same facts as in *Example 1*, except that the Internal Revenue Service fails to refile a notice of lien during the first required refiling period (April 10, 2007, through April 9, 2008). A notice of lien is filed on June 9, 2009, in accordance with §301.6323(f)–1. This notice is ineffective if the original notice contained a certificate of release, as the certificate of release would have had the effect of extinguishing the lien as of April 10, 2008. The Internal Revenue Service could revoke the release and file a new notice of lien, which would be effective as of the date it was filed.

(d) *Effective/applicability date*. This section applies with respect to any notice of Federal tax lien filed on or after April 4, 2011.

Par. 6. Section 301.6323(h)–1 is amended as follows:

1. Paragraphs (a)(2)(ii) and (a)(3) are revised.

2. A new paragraph (h) is added.

The revisions and addition read as follows:

§301.6323(h)–1 Definitions.

(a) * * *

(2) * * *

(ii) The following example illustrates the application of paragraph (a)(2):

Example. (i) Under the law of State X, a security interest in certificated securities, negotiable documents, or instruments may be perfected, and hence protected against a judgment lien, by filing or by

the secured party taking possession of the collateral. However, a security interest in such intangible personal property is considered to be temporarily perfected for a period of 20 days from the time the security interest attaches, to the extent that it arises for new value given under an authenticated security agreement. Under the law of X, a security interest attaches to such collateral when there is an agreement between the creditor and debtor that the interest attaches, the debtor has rights in the property, and consideration is given by the creditor. Under the law of X, in the case of temporary perfection, the security interest in such property is protected during the 20-day period against a judgment lien arising, after the security interest attaches, out of an unsecured obligation. Upon expiration of the 20-day period, the holder of the security interest must perfect its security interest under local law.

(ii) Because the security interest is perfected during the 20-day period against a subsequent judgment lien arising out of an unsecured obligation, and because filing or the taking of possession before the conclusion of the period of temporary perfection is not considered, for purposes of paragraph (a)(2)(i) of this section, to be a requisite action which relates back to the beginning of such period, the requirements of this paragraph are satisfied. Because filing or taking possession is a condition precedent to continued perfection, filing or taking possession of the collateral is a requisite action to establish such priority after expiration of the period of temporary perfection. If there is a lapse of perfection for failure to file or take possession, the determination of when the security interest exists (for purposes of protection against the tax lien) is made without regard to the period of temporary perfection.

(3) *Money or money's worth.* For purposes of this paragraph, the term *money or money's worth* includes money, a security (as defined in paragraph (d) of this section), tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would constitute money or money's worth under the preceding sentence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest, and provided that the grant of the security interest is not a fraudulent transfer under local law or 28 U.S.C. § 3304(a)(2). A firm commitment to part with money, a security, tangible or intangible property, services, or other consideration reducible to a money value does not, in itself, constitute a consideration in money or money's worth. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

* * * * *

(h) *Effective/applicability date.* This section applies as of April 4, 2011.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved March 25, 2011.

Michael Mundaca,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on April 1, 2011, 8:45 a.m., and published in the issue of the Federal Register for April 4, 2011, 76 F.R. 18384)

Section 7811.—Taxpayer Assistance Orders

26 CFR 301.7811–1: Taxpayer assistance orders.

T.D. 9519

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Taxpayer Assistance Orders

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to taxpayer assistance orders. These regulations reflect changes to the law made by the Taxpayer Bill of Rights II, the Internal Revenue Service Restructuring and Reform Act of 1998, the Community Renewal Tax Relief Act of 2000, and the American Jobs Creation Act of 2004. The final regulations affect taxpayers in cases where a taxpayer assistance order is being considered or issued.

DATES: *Effective date:* These regulations are effective on April 1, 2011.

Applicability date: For dates of applicability, see §301.7811–1(f).

FOR FURTHER INFORMATION CONTACT: Janice R. Feldman, (202) 622–8488 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These final regulations contain rules related to taxpayer assistance orders under section 7811 of the Internal Revenue Code (Code). These regulations are necessary to reflect changes to the law made by the Taxpayer Bill of Rights II (TBOR 2), the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), the Community Renewal Tax Relief Act of 2000, and the American Jobs Creation Act of 2004. On July 27, 2009, a notice of proposed rulemaking (REG–152166–05, 2009–32 I.R.B. 183) relating to taxpayer assistance orders was published in the **Federal Register** (74 FR 36973). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted without substantive change by this Treasury decision with one exception. *Example 3* in §301.7811–1(a)(4)(iv) of the regulations illustrating significant costs was revised slightly.

Furthermore, §301.7811–1(g) of the final regulations (T.D. 8403) published on March 23, 1992, in the **Federal Register** (57 FR 9975) defined the term "Ombudsman." After these final regulations were published, section 101 of TBOR 2, Public Law 104–168, 110 Stat. 1452 (1996), amended section 7811 by changing the name of the "Ombudsman" to the "Taxpayer Advocate." Section 1102 of RRA 98, Public Law 105–206, 112 Stat. 685 (1998), further amended section 7811, by replacing "Taxpayer Advocate" with "National Taxpayer Advocate." Thus, §301.7811–1(g), which defined the obsolete term "ombudsman" is being removed by these final regulations as it is obsolete. Section 301.7811–1(e) of the existing final regulations (T.D. 8403), which contains the term "ombudsman" and concerns the suspension of the statute of limitations, was not revised by these final regulations as changes to that section may involve changes to IRS computer processing systems. Thus, all references to the term

"ombudsman" in §301.7811–1(e) should, consistent with the current version of the statute, be construed as referring to the "National Taxpayer Advocate." Possible revisions to §301.7811–1(e) will be considered at a later date.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The information required under this Treasury decision is already required by the current regulations and the Form 911, "*Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order*)." In addition, the Form 911 takes minimal time and expense to prepare, and the filing of a Form 911 is optional. Therefore, preparing the Form 911 does not significantly increase the burden on taxpayers. Based on these facts, the Treasury Department and the IRS have determined that these regulations will not have a significant economic impact on a substantial number of small entities. Furthermore, the substance of the regulations does not concern the Form 911, but the procedures the Taxpayer Advocate Service (TAS) or the Internal Revenue Service (IRS) must follow with respect to taxpayer assistance orders. Therefore, any burden created by these regulations is on the TAS or IRS, not taxpayers. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Janice R. Feldman, Office of the Special Counsel (National Taxpayer Advocate Program) (CC:NTA).

* * * * *

Adoption of the Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.7811–1 is amended by revising paragraphs (a), (b), (c) and (d), removing paragraphs (f), (g), (h) and redesignating paragraph (h) as (f) and revising newly designated paragraph (f) to read as follows:

§301.7811–1 Taxpayer assistance orders.

(a) *Authority to Issue*—(1) *In general.* When an application for a taxpayer assistance order (TAO) is filed by the taxpayer or the taxpayer's authorized representative in the form, manner and time specified in paragraph (b) of this section, the National Taxpayer Advocate (NTA) may issue a TAO if, in the determination of the NTA, the taxpayer is suffering or is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Internal Revenue Service (IRS), including action or inaction on the part of the IRS.

(2) *The National Taxpayer Advocate defined.* The term *National Taxpayer Advocate* includes any designee of the NTA, such as a Local Taxpayer Advocate.

(3) *Issuance without a written application.* The NTA may issue a TAO in the absence of a written application by the taxpayer under section 7811(a).

(4) *Significant hardship*—(i) *Determination required.* Before a TAO may be issued, the NTA is required to make a determination regarding significant hardship.

(ii) *Term defined.* The term *significant hardship* means a serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which the revenue laws are being administered by the IRS. Significant hardship includes situations in which a system or procedure fails to operate as intended or fails to resolve the taxpayer's problem or dispute with the IRS. A significant hardship also includes, but is not limited to:

(A) An immediate threat of adverse action;

(B) A delay of more than 30 days in resolving taxpayer account problems;

(C) The incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or

(D) Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.

(iii) *A delay of more than 30 days in resolving taxpayer account problems is further defined.* A delay of more than 30 days in resolving taxpayer account problems exists under the following conditions:

(A) When a taxpayer does not receive a response by the date promised by the IRS; or

(B) When the IRS has established a normal processing time for taking an action and the taxpayer experiences a delay of more than 30 days beyond the normal processing time.

(iv) *Examples of significant hardship.* The provisions of this section are illustrated by the following examples:

Example 1. Immediate threat of adverse action. The IRS serves a levy on A's bank account. A needs the bank funds to pay for a medically necessary surgical procedure that is scheduled to take place in one week. If the levy is not released, A will lack the funds necessary to have the procedure. A is experiencing an immediate threat of adverse action.

Example 2. Delay of more than 30 days. B files a Form 4506, "*Request for a Copy of Tax Return*." B does not receive the photocopy of the tax return after waiting more than 30 days beyond the normal time for processing. B is experiencing a delay of more than 30 days.

Example 3. Significant costs. The IRS sends XYZ, Inc. a notice requesting payment of the outstanding employment taxes and penalties owed by XYZ, Inc. The notice indicates that XYZ, Inc. has small employment tax balances with respect to 12 employment tax quarters totaling $10X. XYZ, Inc. provides documentation to the IRS which it contends shows that if all payments were applied to each quarter correctly, there would be no balance due. The IRS requests additional records and documentation. Because there are 12 quarters involved, to comply with this request XYZ, Inc. asserts that it will need to hire an accountant, who estimates he will charge at least $5X to organize all the records and provide a detailed analysis of how to apply the deposits and payments. XYZ, Inc. is facing significant costs.

Example 4. Irreparable injury. D has arranged with a bank to refinance his mortgage to lower his monthly payment. D is unable to make the current monthly payment. Unless the monthly payment amount is lowered, D will lose his residence to foreclosure. The IRS refuses to subordinate the Federal tax lien, as permitted by section 6325(d), or discharge the property subject to the lien, as permitted by sec-

tion 6325(b). As a result, the bank will not allow D to refinance. D is facing an irreparable injury if relief is not granted.

(5) *Distinction between significant hardship and the issuance of a TAO*. A finding that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the IRS will not automatically result in the issuance of a TAO. After making a determination of significant hardship, the NTA must determine whether the facts and the law support relief for the taxpayer. In cases where any IRS employee is not following applicable published administrative guidance (including the Internal Revenue Manual), the NTA shall construe the factors taken into account in determining whether to issue a TAO in the manner most favorable to the taxpayer.

(b) *Generally*. A TAO is an order by the NTA to the IRS. The IRS will comply with a TAO unless it is appealed and then modified or rescinded by the NTA, the Commissioner, or the Deputy Commissioner. If a TAO is modified or rescinded by the Commissioner or the Deputy Commissioner, a written explanation of the reasons for the modification or rescission must be provided to the NTA. The NTA may not make a substantive determination of any tax liability. A TAO is also not intended to be a substitute for an established administrative or judicial review procedure, but rather is intended to supplement existing procedures if a taxpayer is about to suffer or is suffering a significant hardship. A request for a TAO shall be made on a Form 911, "*Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)*" (or other specified form) or in a written statement that provides sufficient information for the Taxpayer Advocate Service (TAS) to determine the nature of the harm or the need for assistance. A taxpayer's right to administrative or judicial review will not be diminished or expanded in any way as a result of the taxpayer's seeking assistance from TAS.

(c) *Contents of taxpayer assistance orders*. After establishing that the taxpayer is facing significant hardship and determining that the facts and law support relief to the taxpayer, the NTA may issue a TAO ordering the IRS within a specified time to—

(1) *Release a levy*. Release levied property (to the extent that the IRS may by law release such property); or

(2) *Take certain other actions*. Cease any action, take any action as permitted by law, or refrain from taking any action with respect to a taxpayer pursuant to—

(i) Chapter 64 (relating to collection);

(ii) Chapter 70, subchapter B (relating to bankruptcy and receiverships);

(iii) Chapter 78 (relating to discovery of liability and enforcement of title); or

(iv) Any other provision of the internal revenue laws specifically described by the NTA in the TAO.

(3) *Expedite, review, or reconsider an action at a higher level*. Although the NTA may not make the substantive determination, a TAO may be issued to require the IRS to expedite, reconsider, or review at a higher level an action taken with respect to a determination or collection of a tax liability.

(4) *Examples*. The following examples assume the existence of significant hardship:

Example 1. J contacts a Local Taxpayer Advocate because a wage levy is causing financial difficulties. The NTA determines that the levy should be released as it is causing economic hardship (within the meaning of section 6343(a)(1)(D) and §301.6343–1(b)(4)). The NTA may issue a TAO ordering the IRS to release the levy in whole or in part by a specified date.

Example 2. The IRS rejects K's offer in compromise. K files a Form 911, "*Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)*." The NTA discovers facts that support acceptance of the offer in compromise. The NTA may issue a TAO ordering the IRS to reconsider its rejection of the offer or to review the rejection of the offer at a higher level. The TAO may include the NTA's analysis of and recommendation for resolving the case.

Example 3. L files a protest requesting Appeals consideration of IRS's proposed denial of L's request for innocent spouse relief. Appeals advises L that it is going to issue a Final Determination denying the request for innocent spouse relief. L files a Form 911, "*Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)*." The NTA reviews the administrative record and concludes that the facts support granting innocent spouse relief. The NTA may issue a TAO ordering Appeals to refrain from issuing a Final Determination and reconsider or review at a higher level its decision to deny innocent spouse relief. The TAO may include the NTA's analysis of and recommendation for resolving the case.

(d) *Issuance*. A TAO may be issued to any office, operating division, or function of the IRS. A TAO shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as the order applies to IRS employees. A TAO will not be issued to IRS Criminal Investigation division (CI), or any successor IRS division responsible for the criminal investigation function, if the action ordered in the TAO could reasonably be expected to impede a criminal investigation. CI will determine whether the action ordered in the TAO could reasonably be expected to impede an investigation. Generally, a TAO may not be issued to the Office of Chief Counsel.

* * * * *

(f) *Effective/applicability date*. These regulations are applicable for TAOs issued on or after April 1, 2011, except that paragraph (e) of this section is applicable beginning March 20, 1992.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved March 25, 2011.

Michael Mundaca,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on March 31, 2011, 8:45 a.m., and published in the issue of the Federal Register for April 1, 2011, 76 F.R. 18059)

Part III. Administrative, Procedural, and Miscellaneous

Japan Earthquake and Tsunami Occurring in March 2011 Designated as a Qualified Disaster Under § 139 of the Internal Revenue Code

Notice 2011–32

This notice designates the Japan earthquake and tsunami occurring in March 2011 as a qualified disaster for purposes of § 139 of the Internal Revenue Code.

EARTHQUAKE AND TSUNAMI DISASTER

On March 11, 2011, a magnitude 9.0 earthquake occurred, affecting northeastern Japan and generating a large tsunami which struck the eastern coast of Japan (collectively "Japan earthquake"). As of March 24, 2011, the Japan earthquake has resulted in more than 9,800 confirmed deaths, more than 17,500 missing persons, and approximately 245,000 individuals still taking shelter in evacuation centers. The Japan earthquake also damaged or destroyed more than 139,000 buildings and 2,000 roads and led to a serious nuclear incident at a nuclear power plant. *USAID Fact Sheet No. 13* (March 24, 2011).

This notice enables employer-sponsored private foundations to assist certain victims in areas affected by the Japan earthquake, and enables recipients to exclude qualified disaster relief payments from gross income.

QUALIFIED DISASTER RELIEF PAYMENTS EXCLUDED FROM RECIPIENT'S GROSS INCOME

Section 139(a) provides that gross income shall not include any amount received by an individual as a qualified disaster relief payment.

Section 139(b) provides that a qualified disaster relief payment includes any amount paid to or for the benefit of an individual—

(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses (not compensated for by insurance or otherwise) incurred as a result of a qualified disaster, or

(2) to reimburse or pay reasonable and necessary expenses (not compensated for by insurance or otherwise) incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster.

Under § 139(c)(3) the term "qualified disaster" includes a disaster resulting from an event that is determined by the Secretary to be of a catastrophic nature.

DESIGNATION AS QUALIFIED DISASTER

The Commissioner of Internal Revenue, pursuant to delegation by the Secretary, has determined that the Japan earthquake occurring in March 2011 is an event of a catastrophic nature under § 139(c)(3). Therefore, the Japan earthquake is designated as a qualified disaster under § 139.

SECTION 501(c)(3) ORGANIZATIONS

Employer-sponsored private foundations may choose to provide disaster relief to employee victims of the Japan earthquake. Like all organizations described in § 501(c)(3), private foundations should exercise due diligence when providing disaster relief as set forth in Publication 3833, *Disaster Relief: Providing Assistance Through Charitable Organizations*.

DRAFTING INFORMATION

The principal author of this notice is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Mr. Iskow at (202) 622–4920 (not a toll-free call).

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26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, §§ 167, 168, 446, 481; 1.446–1.)

Rev. Proc. 2011–22

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor method of accounting for determining the recovery periods for depreciation of certain tangible assets used by wireless telecommunications carriers. This revenue procedure also explains how a taxpayer may obtain automatic consent from the Commissioner of Internal Revenue to change to this method of accounting.

SECTION 2. BACKGROUND

.01 Section 167(a) of the Internal Revenue Code provides that there is allowed as a depreciation deduction a reasonable allowance for the exhaustion and wear and tear of property used in a trade or business or held for the production of income. The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168, which prescribes two methods of accounting for determining depreciation allowances: (1) the general depreciation system in § 168(a); and (2) the alternative depreciation system in § 168(g). Under either depreciation system, a taxpayer computes the depreciation deduction by using a prescribed depreciation method, recovery period, and convention. The applicable recovery period for purposes of § 168(a) or § 168(g) is determined by reference to class life or by statute.

Rev. Proc. 87–56, 1987–2 C.B. 674, as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785, provides the class lives of property for computing the depreciation allowance under § 168. That revenue procedure establishes two broad categories of depreciable assets: (1) asset classes 00.11 through 00.4, which consist of specific assets used in all business activities; and (2) asset classes 01.1 through 80.0, which consist of assets used in specific business activities.

.02 Taxpayers and the Internal Revenue Service often do not agree which asset class of Rev. Proc. 87–56 includes the tangible assets used by wireless telecommunications carriers to provide wireless telecommunication services. To minimize disputes regarding the depreciation of these assets, this revenue procedure provides a safe harbor method of accounting for determining the recovery periods of these assets.

.03 Except as otherwise expressly provided by the Code or the regulations thereunder, § 446(e) and § 1.446–1(e)(2) of the

Income Tax Regulations require a taxpayer to secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions necessary to permit a taxpayer to obtain consent to change a method of accounting.

SECTION 3. WIRELESS TELECOMMUNICATION ASSETS

.01 Wireless telecommunication assets include a mobile telephone switching office (MTSO) and cell sites. The functions of the MTSO and cell sites are comparable to those of a wireline telephone central office and the associated land line cables.

.02 The MTSO is a central switching facility that transmits wireless voice and data (including video) communications to and from cell sites and other equipment that comprise the wireless network, and also connects the wireless network to the wireline network (public switched telephone network). The MTSO and its equipment are powered by conventional electrical service with back-up support from electric generators or battery systems.

.03 MTSO equipment typically includes the mobile switching center, base station controllers or generational equivalent, radio network controllers, mobility managers, operations and management platforms, protocol handlers, vocoders, modems, cross-connects, and optical-cross connect bays.

.04 A typical cell site consists of cell site equipment, a self-supporting antenna support structure (also known as a tower) for mounting antennas, and related support and power equipment. Cell site equipment typically includes a base transceiver station or generational equivalent (which may include, for example, vocoders, modems, channel cards, transceivers/amplifiers cards, modulators, demodulators, and combiners), antennas, and alarm and support equipment, and also may include microwave equipment. In some cases, cell site equipment includes a base station controller.

The antenna system at the cell site generally consists of the antennas (with or without remote electrical tilt functionality (RET)), coaxial and jumper cables from the antennas to the base transceiver station (antenna cables), and RET equipment.

A cell site also may include a small structure (the hut) to house and shelter the cell site equipment that does not have its own weather proof enclosure or cabinet.

SECTION 4. SCOPE

This revenue procedure applies to a taxpayer that has a depreciable interest in wireless telecommunication assets (as described in section 3 of this revenue procedure) used primarily to provide wireless telecommunication or broadband services by mobile phones (for example, cell phones or smartphones). This revenue procedure does not apply to a taxpayer that is primarily a cable operator. The determination of whether a taxpayer is within the scope of this revenue procedure is made by each member of a consolidated group, by a partnership, or by an S corporation.

SECTION 5. SAFE HARBOR METHOD OF ACCOUNTING

The Service will not challenge a taxpayer's classification of assets for depreciation purposes as specified in this section 5.

.01 The following wireless telecommunication assets located at the taxpayer's MTSO as included in an asset class of Rev. Proc. 87–56 unless otherwise stated:

(1) MTSO building (including its structural components) as nonresidential real property with a recovery period of 39 years for purposes of § 168(a) and 40 years for purposes of § 168(g);

(2) Cabling (for example, copper T–1 lines or fiber cabling) connecting the MTSO with cell sites or the public switched telephone network as property to which § 168(e)(3)(E)(ii) applies and, therefore, with a recovery period of 15 years for purposes of § 168(a) and 24 years for purposes of § 168(g);

(3) Computer-based switching equipment and related equipment at the MTSO (including the computer-based switching equipment, base station controllers (or generational equivalent), radio network controllers, mobility managers, operations and management platforms, protocol handlers, vocoders, modems, cross-connects, optical-cross connect bays, and associated cables) in asset class 48.121 with a recovery period of 5 years for purposes of § 168(a) and 9.5 years for purposes of § 168(g);

(4) Dedicated heating, ventilation, and air conditioning (HVAC) equipment and dedicated power (including battery backup system) for the computer-based switching equipment and related equipment at the MTSO in asset class 48.121 with a recovery period of 5 years for purposes of § 168(a) and 9.5 years for purposes of § 168(g); and

(5) All other equipment at the MTSO that is not described in asset classes 00.11 through 00.4 as personal property with no class life with a recovery period of 7 years for purposes of § 168(a) and 12 years for purposes of § 168(g).

.02 The following wireless telecommunication assets located at the taxpayer's cell sites as included in an asset class of Rev. Proc. 87–56 unless otherwise stated:

(1) The hut and its foundation:

(a) The hut itself as personal property with no class life with a recovery period of 7 years for purposes of § 168(a) and 12 years for purposes of § 168(g); and

(b) Cement slab or foundation upon which the hut is installed in asset class 00.3 with a recovery period of 15 years for purposes of § 168(a) and 20 years for purposes of § 168(g);

(2) Base station controller (or generational equivalent), base transceiver station (or generational equivalent), their own weather proof enclosure or cabinet (including any equipment integrated into or built into the base station controller or base transceiver station; for example, this equipment might include HVAC and power equipment, alarms, enhanced 911 service equipment, or the RET central control unit (CCU) controller), and associated cables in asset class 48.121 with a recovery period of 5 years for purposes of § 168(a) and 9.5 years for purposes of § 168(g);

(3) Cabling (for example, copper T–1 lines or fiber cabling) connecting the cell site to the MTSO as property to which § 168(e)(3)(E)(ii) applies and, therefore, with a recovery period of 15 years for purposes of § 168(a) and 24 years for purposes of § 168(g);

(4) Dedicated HVAC equipment and dedicated power (including batteries and generators) for the equipment within the hut in asset class 48.121 with a recovery

period of 5 years for purposes of § 168(a) and 9.5 years for purposes of § 168(g);

(5) Antenna systems (including the antenna itself, antenna cables, and RET equipment (other than the RET CCU controller described in section 5.02(2) of this revenue procedure) as personal property with no class life with a recovery period of 7 years for purposes of § 168(a) and 12 years for purposes of § 168(g);

(6) Antenna support structure (also known as a tower) affixed to a foundation (for example, a concrete foundation, a building rooftop, or a building wall):

(a) The antenna support structure itself, whether on a building or land, as personal property with no class life with a recovery period of 7 years for purposes of § 168(a) and 12 years for purposes of § 168(g); and

(b) Concrete foundation (including the bolts embedded therein) upon which the antenna support structure is installed in asset class 00.3 with a recovery period of 15 years for purposes of § 168(a) and 20 years for purposes of § 168(g);

(7) Cell site equipment that is not otherwise described in this section 5.02 (including the microwave equipment, alarms, or enhanced 911 service equipment not integrated into or built into a base station controller or base transceiver station, and associated cables) as personal property with no class life with a recovery period of 7 years for purposes of § 168(a) and 12 years for purposes of § 168(g); and

(8) Depreciable land improvements at the cell site not otherwise described in this section 5.02, such as landscaping that is replaced when a related depreciable asset is replaced, fences, and sidewalks in asset class 00.3 with a recovery period of 15 years for purposes of § 168(a) and 20 years for purposes of § 168(g).

SECTION 6. APPLICATION OF SAFE HARBOR METHOD OF ACCOUNTING

.01 *In General*. A taxpayer within the scope of this revenue procedure may choose to change to the safe harbor method of accounting in section 5 of this revenue procedure for all of the assets, or one or some of the assets, listed in that section.

.02 *Limitation*. The safe harbor method of accounting in section 5 of this revenue procedure is limited to the assets described in section 3 of this revenue procedure and listed in section 5 of this revenue procedure for purposes of determining their classification under § 168(e) solely for depreciation purposes. The Service or taxpayers may not rely upon this safe harbor method of accounting for classifying the same or similar type of assets used in wireline telecommunications or other industries, or for determining whether the same or similar type of assets are inherently permanent structures or real property under other Code sections (for example, §§ 199, 263A, and 856).

SECTION 7. CHANGE IN METHOD OF ACCOUNTING

.01 *In general*.

(1) Except as provided in section 7.01(2) of this revenue procedure, a change to the recovery periods described in section 5 of this revenue procedure and any collateral change to the depreciation methods for all, or some of, the assets listed in that section are a change in method of accounting to which §§ 446(e) and 481 apply. *See* § 1.446–1(e)(2)(ii)(*d*)(*2*). A taxpayer that wants to change to a method of accounting described in this revenue procedure must use the automatic change in method of accounting provisions in Rev. Proc. 2011–14, 2011–4 I.R.B. 330, or its successor, as modified by this revenue procedure.

(2) If a taxpayer placed in service assets listed in section 5 of this revenue procedure in a taxable year ending before December 30, 2003 (pre-2003 assets), the taxpayer may treat the change to the recovery periods described in section 5 of this revenue procedure and any collateral change to the depreciation methods for all, or some of, the pre-2003 assets as not a change in method of accounting and, therefore, the taxpayer files amended federal tax returns to implement the change in computing depreciation for these pre-2003 assets.

.02 *Automatic change*. Rev. Proc. 2011–14 is modified to add new section 6.26 to the APPENDIX, to read as follows:

.26 Safe harbor method of accounting for determining the depreciation of certain tangible assets used by wireless telecommunications carriers under Rev. Proc. 2011–22.

(1) *Description of change*. This change applies to a taxpayer that is within the scope of Rev. Proc. 2011–22 and wants to change to the recovery periods described in section 5 of Rev. Proc. 2011–22 and any collateral change to the depreciation methods for all, or some of, the assets listed in that section.

(2) *Waiver of scope limitations*. The scope limitations in section 4.02 of this revenue procedure do not apply to a taxpayer that changes to the safe harbor method of accounting provided in section 5 of Rev. Proc. 2011–22 for its first or second taxable year ending after December 30, 2010.

(3) *Concurrent automatic change*. A taxpayer that wants to make this change for more than one asset for the same year of change should file a single Form 3115 for all such assets and provide a single net § 481(a) adjustment for all the changes included in that Form 3115. If one or more of the changes in that single Form 3115 generate a negative § 481(a) adjustment and other changes in that same Form 3115 generate a positive § 481(a) adjustment, the taxpayer may provide a single negative § 481(a) adjustment for all the changes that are included in that Form 3115 generating such adjustment and a single positive § 481(a) adjustment for all the changes that are included in that Form 3115 generating such adjustment.

(4) *Ogden copy of Form 3115 required in lieu of national office copy*. A taxpayer changing its method of accounting under section 6.26 of the APPENDIX must file a signed copy of its completed Form 3115 with the IRS in Ogden, UT, (Ogden copy) in lieu of filing the national office copy no earlier than the first day of the year of change and no later than the date the taxpayer files the original Form 3115 with its federal income tax return for the year of change. *See* sections 6.02(3)(a)(ii)(B) (providing the general rules) and section 6.02(7)(b) (providing the mailing address) of this revenue procedure.

(5) *Designated automatic accounting method change numbers*. The designated automatic accounting method change number for a change to the method of accounting provided in Rev. Proc. 2011–22 is "157." *See* section 6.02(4) of this revenue procedure.

(6) *Contact information*. For further information regarding a change under this section, contact Patrick Clinton at (202) 622–4930 (not a toll-free call).

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2011–14 is modified and amplified to include the accounting method change in this revenue procedure in section 6 of the Appendix.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2010.

SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Kathleen Reed of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Patrick Clinton at (202) 622–4930 (not a toll free call).

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26 CFR 1.263(a)–1: Capital expenditures; in general.
(Also Part I, §§ 162, 446, 481; 1.167(a)–11, 1.446–1.)

Rev. Proc. 2011–27

SECTION 1. PURPOSE

This revenue procedure provides two alternative safe harbor approaches that taxpayers may use to determine whether expenditures to maintain, replace, or improve wireline network assets must be capitalized under § 263(a) of the Internal Revenue Code: a network asset maintenance allowance method or a units of property method. This revenue procedure also provides procedures for obtaining automatic consent to change to either safe harbor method of accounting permitted by this revenue procedure.

SECTION 2. BACKGROUND

.01 Taxpayers that provide wireline telecommunication services incur significant expenditures to maintain, replace, and improve wireline network property. Whether these expenditures are deductible as repairs under § 162 or must be capitalized as improvements under § 263(a) depends on whether the expenditures materially increase the value of the property or substantially prolong its useful life. *See* § 1.162–4 of the Income Tax Regulations. Applying capitalization principles to wireline network assets can be particularly difficult, largely because the property consists of a network of interconnected items, such as central office equipment, poles, copper wire, fiber optic cable, and remote and network terminals. Taxpayers and the Internal Revenue Service often do not agree on which items within a network constitute discrete units of property and whether the replacement of a particular item materially increases the value or substantially prolongs the useful life of a unit of property.

.02 To minimize disputes regarding the deductibility or capitalization of expenditures to maintain, replace, or improve wireline network assets, this revenue procedure provides two alternative safe harbor approaches. Section 5 provides a wireline "network asset maintenance allowance method" for determining the amount of expenditures required to be capitalized under § 263(a). Section 6 defines units of property that may be adopted and to which existing principles under § 263(a) are applied.

.03 A taxpayer's method for determining whether an expenditure is deductible or is capitalizable is a method of accounting under § 446. Except as otherwise expressly provided in the Code and the regulations thereunder, § 446(e) and § 1.446–1(e)(2) require a taxpayer to secure the consent of the Commissioner of Internal Revenue before changing a method of accounting for federal income tax purposes. Section 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions necessary to permit a taxpayer to obtain consent to change a method of accounting. Section 7 of this revenue procedure provides the procedures by which a taxpayer may obtain automatic consent for a change in method of accounting to adopt either of the alternative safe harbor approaches provided by this revenue procedure.

SECTION 3. SCOPE

This revenue procedure applies to a taxpayer that has a depreciable interest in wireline network assets (as described in section 4 of this revenue procedure) used primarily to provide wireline telecommunication or broadband services. This revenue procedure does not apply to a taxpayer that is primarily a cable operator. The determination of whether a taxpayer is within the scope of this revenue procedure is made by each member of a consolidated group, by a partnership, or by an S corporation.

SECTION 4. DEFINITIONS

The following definitions apply solely for purposes of this revenue procedure:

.01 *Wireline network assets*. "Wireline network assets" means all personal and real property used by a wireline carrier to provide telecommunication or broadband services. Wireline network assets include central office buildings, central office equipment, towers, poles, copper wire, fiber optic cable, service area interface boxes, and remote and network terminals. Wireline network assets do not include personal or real property not directly used to provide wireline telecommunication or broadband services, such as a corporate office building and the furniture and equipment used in an office building.

.02 *Wire center*. "Wire center" means the wireline network assets located in the geographic area served by a central office (but not including the central office building or central office equipment).

.03 *Central office buildings*. "Central office buildings" means central office buildings (including their structural components) that house network equipment necessary to provide voice or data services (including video).

.04 *Central office equipment*. "Central office equipment" means all switching, transmission, and support equipment at a central office building. Central office equipment includes central processors, switching modules, line cards, input/output controllers, optical line terminal equipment, routers, multiplexers, repeaters, amplifiers, digital cross-connect systems, channel banks, modulators, regenerators, signal converters, batteries, generators, HVAC's required to keep equipment in a central office building at efficient operating levels, and frames that house the equipment where cross connections are

made between the outside cable pairs and the central office equipment.

.05 *Service area interface*. "Service area interface" box (SAI) means an outdoor telecommunications cabinet mounted on the ground (typically on cable right-of-ways) or on telephone poles that protects splice points.

.06 *Remote and network terminal*. "Remote and network terminal" (RNT) means a terminal located outside the central office building that provides management and maintenance functions, and computes bandwidth profiles used for the wireline network and customer premises equipment.

SECTION 5. NETWORK ASSET MAINTENANCE ALLOWANCE METHOD FOR WIRELINE NETWORK ASSETS

.01 *In general*. Under the network asset maintenance allowance method, the taxpayer must determine the amount of its wireline network asset expenditures that are not required to be capitalized under section 5.02 of this revenue procedure (network asset maintenance allowance) and the amount of wireline network asset expenditures that are treated as § 263(a) capital expenditures under section 5.03 of this revenue procedure (§ 263(a) capital expenditures). A taxpayer that uses the network asset maintenance allowance method described in this section 5 must use that method for all of its wireline network asset expenditures (which includes expenditures relating to wireline network assets acquired in an applicable asset acquisition as defined in § 1060 or in a transaction to which § 338(h)(10) applies, even though the cost of such property is removed from the total cost of capital additions for the taxable year as provided in § 5.02(2)(b)-(c) below).

.02 *Network asset maintenance allowance*. The amount of the network asset maintenance allowance for a particular taxable year is determined as follows:

(1) Start with the total cost of capital additions for financial statement purposes that are placed in service (within the meaning of § 1.46–3(d)(1)(ii)) during the taxable year.

(2) Decrease the amount determined in (1) by the following amounts:

(a) the cost of property other than wireline network assets;

(b) the cost of any wireline network assets acquired in an applicable asset acquisition as defined in § 1060; and

(c) the cost of any wireline network assets acquired in a transaction to which § 338(h)(10) applies.

(3) Adjust the amount determined after applying steps (1) and (2) to determine the adjusted basis of the property under § 1011, including any adjustments described in § 1016 except for the following:

(a) Any basis adjustments attributable to changes made after December 31, 2007 to the taxpayer's unit of property definitions used for repair versus capitalization determinations.

(b) Any adjustments described in § 1016(a)(2) and § 1016(a)(3) and any adjustments that require tax basis to be reduced before depreciation is computed (*e.g.*, § 179, § 179D, or similar provisions; § 44 and § 46; and the payments for specified energy property under § 1603 of the American Recovery and Reinvestment Tax Act of 2009, Division B, Pub. L. 111–5, 123 Stat. 115 (section 1603 payments)).

(4) Using the adjusted basis determined in step (3), determine the amount attributable to 5-year, 7-year, 10-year, 15-year, and 20-year property and nonresidential real property, and multiply each of these amounts by 12%. The result is the network asset maintenance allowance for each class of property.

(5) The sum of the network asset maintenance allowances determined in (4) for each class of property is the taxpayer's network asset maintenance allowance amount for the taxable year.

.03 *§ 263(a) capital expenditures*. The wireline network asset capital expenditures for § 263(a) for the taxable year under the network asset maintenance allowance method are determined as follows:

(1) Start with the adjusted basis for 5-year, 7-year, 10-year, 15-year, and 20-year property and nonresidential real property determined in section 5.02(4) above.

(2) For each class of property, multiply the adjusted basis attributable to the class of property by 88%. The result is each class of property's basis amount after taking into account the network asset maintenance allowance.

(3) For each class of property, allocate that class of property's basis amount determined in 5.03(2) among the class of property's wireline network assets (excluding the wireline network assets acquired in an applicable asset acquisition as defined in § 1060 or in a transaction to which § 338(h)(10) applies) according to the basis of each wireline network asset determined before application of the network asset maintenance allowance.

(4) The amount determined in (3) for each network asset (excluding the wireline network assets acquired in an applicable asset acquisition as defined in § 1060 or in a transaction to which § 338(h)(10) applies) is the basis of such asset to be used to determine the deductions allowable or income tax credits available that require tax basis to be reduced before any depreciation is computed (for example, § 179, § 179D, or similar provisions; § 44 and § 46; and section 1603 payments). The net amount for each network asset after the reduction in basis for such deductions, credits, and section 1603 payments is that property's § 1.168(b)–1(a)(3) unadjusted depreciable basis.

(5) In addition, expenditures for wireline network assets acquired in an applicable asset acquisition as defined in § 1060 or in a transaction to which § 338(h)(10) applies are capital expenditures under § 263(a) to which the ordinarily applicable basis and holding period rules and regulations apply.

.04 *Required schedule*. A taxpayer utilizing the wireline network asset maintenance allowance method must attach a schedule to its federal income tax return for the taxable year identifying the amounts for each step of the network asset maintenance allowance method computation provided in sections 5.02(1)-(5) above.

.05 *Example*. *X* is a wireline carrier with network assets used primarily to provide wireline telecommunication or broadband services. *X* adopts the wireline network maintenance allowance method provided in this revenue procedure. To determine the wireline network asset maintenance allowance for the taxable year, *X* first determines its adjusted basis attributable to wireline network assets as follows:

Total cost of capital additions placed in service for the taxable year per financial statements	$1,000,000,000
Less: Cost of property other than wireline network assets (*e.g.* land, intangibles, etc.)	($100,000,000)
Less: Cost of assets acquired in a § 1060 or § 338(h)(10) transaction	($11,000,000)
Less/Plus: Other basis adjustments (excluding adjustments per IRC §§ 1016(a)(2) & (a)(3) and sections 5.02(3)(a) & 5.03(4) of this rev. proc.)	($3,000,000)
Adjusted basis attributable to network assets that are 5-year, 7-year, 10-year, 15-year, and 20-year property and nonresidential real property	$886,000,000
Multiply by: Maintenance allowance percentage (12%)	X 12%
Network asset maintenance allowance amount	$106,320,000

SECTION 6. UNITS OF PROPERTY FOR WIRELINE NETWORK ASSETS

.01 *In general.* For wireline network assets, the Service will not challenge any of the following unit of property determinations for purposes of the application of § 263(a) and the regulations thereunder:

(A) all the towers and poles, and all the structures and fittings mounted on towers and poles, ("fully-dressed poles") in a wire center constitute a single unit of property;

(B) all the copper wire and any associated devices, whether overhead or underground, in a wire center constitute a single unit of property;

(C) all the fiber optic cable and any associated devices, whether overhead or underground, in a wire center constitute a single unit of property;

(D) all the underground conduit and ducts, as well as controlled environmental vaults ("CEVs"), manholes, and handholes, in a wire center constitute a single unit of property;

(E) each central office building (including its structural components) constitutes a single unit of property;

(F) all central office equipment associated with a central office building constitutes a single unit of property;

(G) all SAI boxes in a wire center constitute a single unit of property; and

(H) all RNTs in a wire center constitute a single unit of property.

.02 *Universal adoption not required.* A taxpayer within the scope of this revenue procedure is not required to adopt all of the unit of property determinations provided in section 6.01 of this revenue procedure and, therefore, may adopt one or more of the unit of property determinations provided. Once adopted, however, a unit of property determination applies to all similar assets, including similar wireline network assets acquired in an applicable asset acquisition as defined in § 1060 or in a transaction to which § 338(h)(10) applies.

.03 *Limitation.* The unit of property determinations provided in this revenue procedure shall not apply for any other purpose of the Code or Regulations, including for determining the unit of property under other Code sections (for example, § 263A), or determining the asset for depreciation purposes (including placed in service, retirements, dispositions, or classification under § 168(e) or Rev. Proc. 87–56, 1987–2 C.B. 674), for the same or similar type of assets used in wireline telecommunications or other industries.

SECTION 7. CHANGE IN METHOD OF ACCOUNTING

.01 *In general.* A change to (1) the wireline network asset maintenance allowance method or (2) adoption of all, or some, of the units of property described in this revenue procedure is a change in method of accounting to which the provisions of §§ 446 and 481, and the regulations thereunder, apply. A taxpayer that wants to change to a method of accounting described in this revenue procedure must use the automatic change in method of accounting provisions in Rev. Proc. 2011–14, 2011–4 I.R.B. 330, or its successor, as modified by this revenue procedure.

.02 *Automatic change.* Rev. Proc. 2011–14 is modified to add new section 3.07 to the APPENDIX, to read as follows:

.07 *Wireline network asset maintenance allowance and units of property methods of accounting under Rev. Proc. 2011–27.*

(1) *Description of change.* This change applies to a wireline telecommunications carrier that is within the scope of Rev. Proc. 2011–27 and wants to change its treatment of wireline network asset expenditures to adopt either (a) the wireline network asset maintenance allowance method of accounting or (b) all, or some, of the units of property described in Rev. Proc. 2011–27.

(2) *Waiver of scope limitations.* The scope limitations in section 4.02 of this revenue procedure do not apply to a wireline telecommunications carrier that changes to a method of accounting provided in section 5 or section 6 of Rev. Proc. 2011–27 for its first or second taxable year ending after December 30, 2010.

(3) *Section 481(a) adjustment.* In general, a change to the wireline network asset maintenance allowance method of accounting or adoption of all, or some, of the units of property specified in Rev. Proc. 2011–27 requires an adjustment under § 481(a). The § 481(a) adjustment shall not include any amount attributable to property for which the taxpayer elected to apply the repair allowance under § 1.167(a)–11(d)(2).

(4) *Ogden copy of Form 3115 required in lieu of national office copy.* A taxpayer changing its method of accounting under section 3.07 of the APPENDIX must file a signed copy of its completed Form 3115 with the IRS in Ogden, UT, (Ogden copy) in lieu of filing the national office copy no earlier than the first day of the year of change and no later than the date the taxpayer files the original Form 3115 with its federal income tax return for the year of change. *See* section 6.02(3)(a)(ii)(B) (providing the general rules) and section 6.02(7)(b) (providing the mailing address) of this revenue procedure.

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change

number for a change to the method of accounting provided in Rev. Proc. 2011–27 is "158."

(6) *Contact information*. For further information regarding a change under this section, contact Alan S. Williams at (202) 622–4950 (not a toll-free call).

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2011–14 is modified to include the accounting method change in this revenue procedure in section 3 of the Appendix.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2010.

SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Alan S. Williams of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Alan S. Williams at (202) 622–4950 (not a toll-free call).

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26 CFR 1.263(a)–1: Capital expenditures; in general.
(Also Part I, §§ 162, 446, 481; 1.167(a)–11, 1.446–1.)

Rev. Proc. 2011–28

SECTION 1. PURPOSE

This revenue procedure provides two alternative safe harbor approaches that taxpayers may use to determine whether expenditures to maintain, replace, or improve wireless network assets must be capitalized under § 263(a) of the Internal Revenue Code: a network asset maintenance allowance method or a units of property method. This revenue procedure also provides procedures for obtaining automatic consent to change to either safe harbor method of accounting permitted by this revenue procedure.

SECTION 2. BACKGROUND

.01 Taxpayers that provide wireless telecommunication services incur significant expenditures to maintain, replace, and improve wireless network property. Whether these expenditures are deductible as repairs under § 162 or must be capitalized as improvements under § 263(a) depends on whether the expenditures materially increase the value of the property or substantially prolong its useful life. *See* § 1.162–4 of the Income Tax Regulations. Applying capitalization principles to wireless network assets can be particularly difficult, largely because the property consists of a network of interconnected items such as mobile telephone switching offices and property located at cell sites. Taxpayers and the Internal Revenue Service often do not agree on which items within this network constitute discrete units of property and whether the replacement of a particular item materially increases the value or substantially prolongs the useful life of a unit of property.

.02 To minimize disputes regarding the deductibility or capitalization of expenditures to maintain, replace, or improve wireless network assets, this revenue procedure provides two alternative safe harbor approaches. Section 5 provides a wireless "network asset maintenance allowance method" for determining the amount of expenditures required to be capitalized under § 263(a). Section 6 defines units of property that may be adopted and to which existing principles under § 263(a) are applied.

.03 A taxpayer's method for determining whether an expenditure is deductible or is capitalizable is a method of accounting under § 446. Except as otherwise expressly provided by the Code or the regulations thereunder, § 446(e) and § 1.446–1(e)(2) require a taxpayer to secure the consent of the Commissioner of Internal Revenue before changing a method of accounting for federal income tax purposes. Section 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions necessary to permit a taxpayer to obtain consent to change a method of accounting. Section 7 of this revenue procedure provides the procedures by which a taxpayer may obtain automatic consent for a change in method of accounting to adopt either of the alternative safe harbor approaches provided by this revenue procedure.

SECTION 3. SCOPE

This revenue procedure applies to a taxpayer that has a depreciable interest in wireless network assets (as described in section 4 of this revenue procedure) used primarily to provide wireless telecommunication or broadband services by mobile phones (for example, cell phones or smartphones). This revenue procedure does not apply to a taxpayer that is primarily a cable operator. The determination of whether a taxpayer is within the scope of this revenue procedure is made by each member of a consolidated group, by a partnership, or by an S corporation.

SECTION 4. DEFINITIONS

The following definitions apply solely for purposes of this revenue procedure:

.01 *Wireless network assets*. "Wireless network assets" means all personal and real property used by a wireless telecommunications carrier to provide wireless telecommunication or broadband services by mobile phone. Wireless network assets include a mobile telephone switching office (MTSO) and property located at cell sites. Wireless network assets do not include personal or real property not directly used to provide wireless telecommunication or broadband services by mobile phone, such as a corporate office building and the furniture and equipment used in an office building.

.02 *Mobile telephone switching office*. "Mobile telephone switching office" (MTSO) means a central switching facility that transmits wireless voice and data (including video) communications to and from cell sites and other equipment that comprise the wireless network, and also connects the wireless network to the wireline network (public switched telephone network). The MTSO and its equipment are powered by conventional electrical service with back-up support from electric generators or battery systems.

.03 *MTSO equipment*. "MTSO equipment" means the equipment located at a MTSO and typically includes computer-based switching equipment and related equipment at the MTSO (including

the computer-based switching equipment, base station controllers (or generational equivalent), radio network controllers, mobility managers, operations and management platforms, protocol handlers, vocoders, modems, cross-connects, optical-cross connect bays, and associated cables), dedicated heating, ventilation, and air conditioning (HVAC) equipment and dedicated power (including battery backup system) for the computer-based switching equipment and related equipment at the MTSO.

.04 *Cell site transmission equipment*. "Cell site transmission equipment" includes the antenna systems (including the antenna itself, antenna cables, microwave equipment, RET equipment, and the RET central control unit (CCU) controller) but does not include base transceiver station radio cabinets or cell site support and other equipment.

.05 *Cell site radio equipment*. "Cell site radio equipment" includes the base station controller (or generational equivalent), base transceiver station (or generational equivalent), their own weather proof enclosure or cabinet (including any equipment integrated into or built into the base station controller or base transceiver station; for example, integrated or built-in equipment might include HVAC and power equipment, alarms, enhanced 911 service equipment, or the RET CCU controller), and associated cables.

.06 *Cell site support equipment*. "Cell site support equipment" includes the alarms or enhanced 911 service equipment not integrated into or built into a base station controller or base transceiver station, and associated cables. This unit of property does not include general incoming power panels, general receptacles, general lighting, common cell site enclosure grounding systems, or equipment integrated into or considered part of the cell site enclosure.

SECTION 5. NETWORK ASSET MAINTENANCE ALLOWANCE METHOD FOR WIRELESS NETWORK ASSETS

.01 *In general*. Under the network asset maintenance allowance method, the taxpayer must determine the amount of its wireless network asset expenditures that are not required to be capitalized under section 5.02 of this revenue procedure (network asset maintenance allowance) and the amount of wireless network asset expenditures that are treated as § 263(a) capital expenditures under section 5.03 of this revenue procedure (§ 263(a) capital expenditures). A taxpayer that uses the network asset maintenance allowance method described in this section 5 must use that method for all of its wireless network asset expenditures (which includes expenditures relating to wireless network assets acquired in an applicable asset acquisition as defined in § 1060 or in a transaction to which § 338(h)(10) applies, even though the cost of such property is removed from the total cost of capital additions for the taxable year as provided in § 5.02(2)(b)-(c) below).

.02 *Network asset maintenance allowance*. The amount of the network asset maintenance allowance for a particular taxable year is determined as follows:

(1) Start with the total cost of capital additions for financial statement purposes that are placed in service (within the meaning of § 1.46–3(d)(1)(ii)) during the taxable year.

(2) Decrease the amount determined in (1) by the following amounts:

(a) the cost of property other than wireless network assets;

(b) the cost of any wireless network assets acquired in an applicable asset acquisition as defined in § 1060; and

(c) the cost of any wireless network assets acquired in a transaction to which § 338(h)(10) applies.

(3) Adjust the amount determined after applying steps (1) and (2) to determine the adjusted basis of the property under § 1011, including any adjustments described in § 1016 except for the following:

(a) Any basis adjustments attributable to changes made after December 31, 2007 to the taxpayer's unit of property definitions used for repair versus capitalization determinations.

(b) Any adjustments described in § 1016(a)(2) and § 1016(a)(3) and any adjustments that require tax basis to be reduced before depreciation is computed (*e.g.*, § 179, § 179D, or similar provisions; § 44 and § 46; and the payments for specified energy property under § 1603 of the American Recovery and Reinvestment Tax Act of 2009, Division B, Pub. L. 111–5, 123 Stat. 115 (section 1603 payments)).

(4) Using the adjusted basis determined in step (3), determine the amount attributable to 5-year, 7-year, and 15-year property and nonresidential real property, and multiply each of these amounts by 5%. The result is the network asset maintenance allowance for each class of property.

(5) The sum of the network asset maintenance allowances determined in (4) for each class of property is the taxpayer's network asset maintenance allowance amount for the taxable year.

.03 *§ 263(a) capital expenditures*. The wireless network asset capital expenditures for § 263(a) for the taxable year under the network asset maintenance allowance method are determined as follows:

(1) Start with the adjusted basis for 5-year, 7-year, and 15-year property and nonresidential real property determined in section 5.02(4) above.

(2) For each class of property, multiply the adjusted basis attributable to the class of property by 95%. The result is each class of property's basis amount after taking into account the network asset maintenance allowance.

(3) For each class of property, allocate that class of property's basis amount determined in 5.03(2) among the class of property's wireless network assets (excluding wireless network assets acquired in an applicable asset acquisition as defined in § 1060 or in a transaction to which § 338(h)(10) applies) according to the basis of each wireless network asset determined before application of the network asset maintenance allowance.

(4) The amount determined in (3) for each network asset (excluding wireless network assets acquired in an applicable asset acquisition as defined in § 1060 or in a transaction to which § 338(h)(10) applies) is the basis of such asset to be used to determine the deductions allowable or income tax credits available that require tax basis to be reduced before any depreciation is computed (for example, § 179, § 179D, or similar provisions; § 44 and § 46; and section 1603 payments). The net amount for each network asset after the reduction in basis for such deductions, credits, and section 1603 payments is that property's § 1.168(b)–1(a)(3) unadjusted depreciable basis.

(5) In addition, expenditures for wireless network assets acquired in an applicable asset acquisition as defined in § 1060 or in a transaction to which § 338(h)(10) applies are capital expenditures under § 263(a) to which the ordinarily applicable basis and holding period rules and regulations apply.

.04 *Required schedule*. A taxpayer utilizing the network asset maintenance allowance method must attach a schedule to its federal income tax return for the taxable year identifying the amounts for each step of the network asset maintenance allowance method computation provided in sections 5.02(1)-(5) above.

.05 *Example*. X is a wireless telecommunications carrier with wireless network assets used primarily to provide wireless telecommunication or broadband services by mobile phones. X adopts the wireless network asset maintenance allowance method provided in this revenue procedure. To determine the wireless network asset maintenance allowance for the taxable year, X first determines its adjusted basis attributable to wireless network assets as follows:

Total cost of capital additions placed in service for the taxable year per financial statements	$1,000,000,000
Less: Cost of property other than wireless network assets (*e.g.* land, intangibles, etc.)	($100,000,000)
Less: Cost of assets acquired in a § 1060 or § 338(h)(10) transaction	($11,000,000)
Less/Plus: Other basis adjustments (excluding adjustments per IRC §§ 1016(a)(2) & (a)(3) and sections 5.02(3)(a) & 5.03(4) of this rev. proc.)	($3,000,000)
Adjusted basis attributable to network assets that are 5-year, 7-year, and 15-year property and nonresidential real property	$886,000,000
Multiply by: Maintenance allowance percentage (5%)	X 5%
Network asset maintenance allowance amount	$44,300,000

SECTION 6. UNITS OF PROPERTY FOR WIRELESS NETWORK ASSETS

.01 *In general*. For wireless network assets, the Service will not challenge any of the following unit of property determinations for purposes of the application of § 263(a) and the regulations thereunder:

(A) the MTSO building (including its structural components) constitutes a single unit of property;

(B) all of the MTSO equipment constitutes a single unit of property;

(C) all cell site transmission equipment at a cell site constitutes a single unit of property;

(D) all cell site radio equipment at a cell site constitutes a single unit of property;

(E) all cell site support equipment at a cell site constitutes a single unit of property;

(F) the antenna support structure (also known as a tower) affixed to a foundation (for example, a concrete foundation, a building rooftop, or a building wall) at a cell site constitutes a single unit of property;

(G) the concrete foundation upon which the antenna support structure is installed, including the bolts embedded therein and other depreciable assets associated with the platform or other forms of anchoring to affix a tower to a foundation, constitutes a single unit of property;

(H) the cell site enclosure (hut) and the cement slab or foundation upon which the hut is installed constitute a single unit of property; and

(I) all depreciable land improvements at a cell site constitute a single unit of property. Depreciable land improvements include landscaping that is replaced when a related depreciable asset is replaced, fences, and sidewalks, but exclude enclosures or buildings suitable for occupation and any improvements properly capitalized to the land.

.02 *Universal adoption not required*. A taxpayer within the scope of this revenue procedure is not required to adopt all of the unit of property determinations provided in section 6.01 of this revenue procedure and, therefore, may adopt one or more of the unit of property determinations provided. Once adopted, however, a unit of property determination applies to all similar assets, including similar wireless network assets acquired in an applicable asset acquisition as defined in § 1060 or in a transaction to which § 338(h)(10) applies.

.03 *Limitation*. The unit of property determinations provided in this revenue procedure shall not apply for any other purpose of the Code or Regulations, including for determining the unit of property under other Code sections (for example, § 263A), or determining the asset for depreciation purposes (including placed in service, retirements, dispositions, or classification under § 168(e) or Rev. Proc. 87–56, 1987–2 C.B. 674), for the same or similar type of assets used in wireless telecommunications or other industries.

SECTION 7. CHANGE IN METHOD OF ACCOUNTING

.01 *In general*. A change to (1) the wireless network asset maintenance allowance method or (2) adoption of all, or some, of the units of property described in this revenue procedure is a change in method of accounting to which the provisions of §§ 446 and 481, and the regulations thereunder, apply. A taxpayer that wants to change to a method of accounting described in this revenue procedure must use the automatic change in method of accounting provisions in Rev. Proc. 2011–14, 2011–4 I.R.B. 330, or its successor, as modified by this revenue procedure.

.02 *Automatic change*. Rev. Proc. 2011–14 is modified to add new section 3.08 to the APPENDIX, to read as follows:

.08 *Wireless network asset maintenance allowance and units of property methods of accounting under Rev. Proc. 2011–28*.

(1) *Description of change*. This change applies to a wireless telecommunications carrier that is within the scope of Rev. Proc. 2011–28 and wants to change its treatment of wireless network asset expenditures to adopt either (a) the wireless network asset maintenance allowance method

of accounting or (b) all, or some, of the units of property described in Rev. Proc. 2011–28.

(2) *Waiver of scope limitations*. The scope limitations in section 4.02 of this revenue procedure do not apply to a wireless telecommunications carrier that changes to a method of accounting provided in section 5 or section 6 of Rev. Proc. 2011–28 for its first or second taxable year ending after December 30, 2010.

(3) *Section 481(a) adjustment*. In general, a change to the wireless network asset maintenance allowance method of accounting or adoption of all, or some, of the units of property specified in Rev. Proc. 2011–28 requires an adjustment under § 481(a). The § 481(a) adjustment shall not include any amount attributable to property for which the taxpayer elected to apply the repair allowance under § 1.167(a)–11(d)(2).

(4) *Ogden copy of Form 3115 required in lieu of national office copy*. A taxpayer changing its method of accounting under section 3.08 of the APPENDIX must file a signed copy of its completed Form 3115 with the IRS in Ogden, UT, (Ogden copy) in lieu of filing the national office copy no earlier than the first day of the year of change and no later than the date the taxpayer files the original Form 3115 with its federal income tax return for the year of change. *See* sections 6.02(3)(a)(ii)(B) (providing the general rules) and section 6.02(7)(b) (providing the mailing address) of this revenue procedure.

(5) *Designated automatic accounting method change numbers*. The designated automatic accounting method change number for a change to the method of accounting provided in Rev. Proc. 2011–28 is "159."

(6) *Contact information*. For further information regarding a change under this section, contact Alan S. Williams at (202) 622–4950 (not a toll-free call).

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2011–14 is modified to include the accounting method change in this revenue procedure in section 3 of the Appendix.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2010.

SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Alan S. Williams of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Alan S. Williams at (202) 622–4950 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, §§ 263(a), 1.263(a)–5.)

Rev. Proc. 2011–29

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor election for allocating success-based fees paid in business acquisitions or reorganizations described in § 1.263(a)–5(e)(3) of the Income Tax Regulations. In lieu of maintaining the documentation required by § 1.263(a)–5(f), this safe harbor permits electing taxpayers to treat 70 percent of the success-based fee as an amount that does not facilitate the transaction. The remaining portion of the fee must be capitalized as an amount that facilitates the transaction.

SECTION 2. BACKGROUND

.01 Section 263(a)(1) of the Internal Revenue Code and § 1.263(a)–2(a) provide that no deduction shall be allowed for any amount paid out for property having a useful life substantially beyond the taxable year. In the case of an acquisition or reorganization of a business entity, costs that are incurred in the process of acquisition and that produce significant long-term benefits must be capitalized. *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 89–90 (1992); *Woodward v. Commissioner*, 397 U.S. 572, 575–576 (1970).

.02 Under § 1.263(a)–5, a taxpayer must capitalize an amount paid to facilitate a business acquisition or reorganization transaction described in § 1.263(a)–5(a). An amount is paid to facilitate a transaction described in § 1.263(a)–5(a) if the amount is paid in the process of investigating or otherwise pursuing the transaction.

.03 Section 1.263(a)–5(f) provides that an amount that is contingent on the successful closing of a transaction described in § 1.263(a)–5(a) ("success-based fee") is presumed to facilitate the transaction. A taxpayer may rebut the presumption by maintaining sufficient documentation to establish that a portion of the fee is allocable to activities that do not facilitate the transaction.

.04 A taxpayer's method for determining the portion of a success-based fee that facilitates a transaction and the portion that does not facilitate the transaction is a method of accounting under § 446.

.05 The Internal Revenue Service and the Treasury Department are aware that the treatment of success-based fees continues to be the subject of controversy between taxpayers and the Service. In particular, numerous disagreements have arisen regarding the type and extent of documentation required to establish that a portion of a success-based fee is allocable to activities that do not facilitate a business acquisition or reorganization transaction described in § 1.263(a)–5(e)(3) ("covered transaction"). The Service and the Treasury Department expect that much of this controversy can be eliminated by providing taxpayers a simplified method for allocating a success-based fee paid in a covered transaction between facilitative and non-facilitative activities. Accordingly, this revenue procedure provides a safe harbor election for allocating a success-based fee between activities that facilitate a covered transaction and activities that do not facilitate a covered transaction.

SECTION 3. SCOPE

This revenue procedure applies to a taxpayer that—

(1) pays or incurs a success-based fee for services performed in the process of investigating or otherwise pursuing a transaction described in § 1.263(a)–5(e)(3); and

(2) makes the safe harbor election described in section 4 of this revenue procedure.

SECTION 4. SAFE HARBOR ELECTION

.01 The Service will not challenge a taxpayer's allocation of a success-based fee between activities that facilitate a transaction described in § 1.263(a)–5(e)(3) and activities that do not facilitate the transaction if the taxpayer—

(1) treats 70 percent of the amount of the success-based fee as an amount that does not facilitate the transaction;

(2) capitalizes the remaining 30 percent as an amount that does facilitate the transaction; and

(3) attaches a statement to its original federal income tax return for the taxable year the success-based fee is paid or incurred, stating that the taxpayer is electing the safe harbor, identifying the transaction, and stating the success-based fee amounts that are deducted and capitalized.

.02 An election under this revenue procedure applies only to the transaction for which the election is made and, once made, is irrevocable. The election applies with respect to all success-based fees paid or incurred by the taxpayer in the transaction for which the election is made.

.03 An election under this revenue procedure for any transaction does not constitute a change in method of accounting for success-based fees generally. Accordingly, a § 481(a) adjustment is neither permitted nor required.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for success-based fees paid or incurred in taxable years ending on or after April 8, 2011.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Nancy J. Lee of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Nancy J. Lee or Jason D. Kristall of the Office of Associate Chief Counsel (Income Tax & Accounting) at (202) 622–5020 (not a toll-free call).

Part IV. Items of General Interest

Rewards and Awards for Information Relating to Violations of Internal Revenue Laws; Hearing

Announcement 2011–28

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on a notice of proposed rulemaking relating to the payment of rewards under section 7623(a) of the Internal Revenue Code and awards under section 7623(b). The guidance is necessary to clarify the definition of proceeds of amounts collected and collected proceeds under section 7623. This regulation provides needed guidance to the general public as well as officers and employees of the IRS who review claims under section 7623.

DATES: The public hearing is being held on Wednesday, May 11, 2011, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by Tuesday, April 19, 2011.

ADDRESSES: The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Send submissions to: CC:PA:LPD:PR (REG–131151–10), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–131151–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kirsten N. Witter at (202) 927–0900; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–131151–10) that was published in the **Federal Register** on Tuesday, January 18, 2011 (76 FR 2852).

Persons, who wish to present oral comments at the hearing that submitted written comments, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by Tuesday, April 19, 2011.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue NW entrance, 1111 Constitution Avenue, NW, Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the FOR FURTHER INFORMATION CONTACT section of this document.

Guy R. Traynor,
Acting Chief,
Publications and Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).

(Filed by the Office of the Federal Register on March 31, 2010, 8:45 a.m., and published in the issue of the Federal Register for April 1, 2011, 76 F.R. 18134)

Reinstatement of Renewal Period For Enrolled Agents Whose Tax Identification Numbers End In 4, 5, Or 6

Announcement 2011–29

In Announcement 2010–81, 2010–45 I.R.B 638, the IRS delayed the renewal period under section 10.6(d) of the regulations governing practice before the IRS, Treasury Department Circular No. 230, 31 CFR part 10 (Circular 230), for enrolled agents whose social security number or tax identification number ends in 4, 5, or 6. This announcement reinstates the renewal period for affected enrolled agents beginning June 1, 2011, which is thirty days after the publication of this announcement.

Section 10.6(d) of Circular 230 requires that, to maintain active enrollment to practice before the IRS, enrolled agents must renew enrollment every third year after initial enrollment is granted. The renewal period for enrolled agents whose social security number or tax identification number ends in 4, 5, or 6 was scheduled to begin on November 1, 2010, and end on January 31, 2011.

On October 14, 2010, the Treasury Department and the IRS released Announcement 2010–81, which delayed the renewal period for enrolled agents whose social security number or tax identification number ends in 4, 5, or 6. The Treasury Department and the IRS delayed the renewal period at that time because it anticipated issuing guidance that reduced the initial enrollment and renewal of enrollment user fees for enrolled agents and enrolled retirement plan agents. The reduction in these user fees resulted from the reallocation of portions of the enrolled agent and enrolled retirement plan agent initial enrollment and renewal of enrollment processes to the PTIN application and renewal process, which are recovered by a $50 user fee to the IRS to apply for or renew a preparer tax identification number (PTIN). *See* Treas. Reg. § 300.9. On April 19, 2011, the Treasury Department and the IRS published final regulations (T.D. 9523, 76 FR 21805) that reduce the enrolled agent and enrolled retirement

plan agent initial enrollment and renewal of enrollment user fees to $30.

Accordingly, the Treasury Department and the IRS now announce that the renewal period for enrolled agents is reinstated beginning June 1, 2011. The renewal period will conclude 90 days later on August 30, 2011. Enrolled agents whose social security number or tax identification number ends in 4, 5, or 6 must submit their application for renewal of enrollment, along with the $30 renewal fee, to the IRS during this period. The IRS expects to process these applications and issue enrollment cards before November 28, 2011, 90 days after the end of the enrollment period.

The enrollment status of enrolled agents who come within the provisions of Announcement 2010–81 is not affected due to the delay announced in that document. Renewal of enrollment will be retroactive to April 1, 2011, for enrolled agents who come within the provisions of Announcement 2010–81 and who properly renew their enrollment before August 31, 2011. These enrolled agents must still complete all continuing professional education hours as provided in section 10.6(e) of Circular 230.

Enrolled agents not affected by Announcement 2010–81 should refer to sections 10.6(d)(2) and (3) in Circular 230 to determine their renewal of enrollment periods. Enrolled agents whose social security numbers do not end in 4, 5, or 6, whose renewal of enrollment period was prior to January 31, 2011, and who are delinquent in renewing their enrollment must pay the $125 renewal fee.

The principal author of this announcement is Emily M. Lesniak of the Office of the Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, contact Emily M. Lesniak at (202) 622–4570 (not a toll-free call).

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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