Internal Revenue bulletin

Bulletin No. 2013-6
February 4, 2013

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

T.D. 9607, page 469.

Final regulations under section 704 of the Code regarding the application of the substantiality de minimis rule. In the interest of sound tax administration, this rule is being made inapplicable. These final regulations affect partnerships and their partners.

Notice 2013–7, page 477.

This notice extends earlier guidance on the federal tax consequences of payments made to or on behalf of financially distressed homeowners under programs established pursuant to the Treasury Department's Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets and the Department of Housing and Urban Development's Emergency Homeowners' Loan Program. This notice also extends the earlier guidance on the information reporting requirements for these payments. Notice 2011–14 and Rev. Proc. 2011–55 amplified and supplemented.

Rev. Proc. 2013–13, page 478.

This procedure provides an optional safe harbor method for an individual taxpayer to use to determine the amount of deductible expenses related to a qualified business use of the taxpayer's home. The safe harbor method is an alternative to calculating and substantiating actual expenses for purposes of section 280A of the Code. Section 8.02 of Rev. Proc. 87–57 modified.

EMPLOYEE PLANS

Notice 2013–2, page 473.

Weighted average interest rate update; corporate bond indices; 30-year Treasury securities; segment rates. This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in January 2013; the 24-month average segment rates; the funding transitional segment rates applicable for January 2013; and the minimum present value transitional rates for December 2012.

ADMINISTRATIVE

Notice 2013–7, page 477.

This notice extends earlier guidance on the federal tax consequences of payments made to or on behalf of financially distressed homeowners under programs established pursuant to the Treasury Department's Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets and the Department of Housing and Urban Development's Emergency Homeowners' Loan Program. This notice also extends the earlier guidance on the information reporting requirements for these payments. Notice 2011–14 and Rev. Proc. 2011–55 amplified and supplemented.

Announcement 2013–11, page 483.

This announcement contains corrections to Publication 4436, *General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), and Schedule R (Form 941)*. Rev. Proc. 2012–46 corrected.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Section 163.—Interest

The Service extends guidance on the federal tax consequences of payments made to or on behalf of financially distressed homeowners under programs established pursuant to the Treasury Department's Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets and the Department of Housing and Urban Development's Emergency Homeowners' Loan Program. Notice 2011-14 and Rev. Proc. 2011-55 amplified and supplemented. See Notice 2013-7, page 477.

Section 164.—Taxes

The Service extends guidance on the federal tax consequences of payments made to or on behalf of financially distressed homeowners under programs established pursuant to the Treasury Department's Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets and the Department of Housing and Urban Development's Emergency Homeowners' Loan Program. Notice 2011-14 and Rev. Proc. 2011-55 amplified and supplemented. See Notice 2013-7, page 477.

Section 704.—Partner's Distributive Share

26 CFR 1.704–1: Partner's distributive share.

T.D. 9607

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Partner's Distributive Share

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the application of the substantiality de minimis rule. In the interest of sound tax administration, this rule is being made inapplicable. These final regulations affect partnerships and their partners.

DATES: *Effective Date:* The final regulations are effective on December 28, 2012.

Applicability Date: The final regulations under §1.704–1(b)(2)(iii)(*e*)(*1*) are applicable for partnership taxable years beginning after May 19, 2008 and beginning before December 28, 2012. The final regulations under §1.704–1(b)(2)(iii)(*e*)(*2*)(*i*) are applicable beginning on or after December 28, 2012, and the final regulations under §1.704–1(b)(2)(iii)(*e*)(*2*)(*ii*) are applicable for partnership taxable years beginning on or after December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Rebecca Kahane, at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These final regulations contain amendments to the Income Tax Regulations (26 CFR Part 1) under section 704 of the Internal Revenue Code (Code). On October 25, 2011, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–109564–10, 2011–50 I.R.B. 852 [76 FR 66011]) (the proposed regulations) in the **Federal Register** to remove the de minimis rule in §1.704–1(b)(2)(iii)(*e*) (the de minimis partner rule). The proposed regulations provide that the final regulations are effective on the date they are published in the **Federal Register**.

The Treasury Department and the IRS did not hold a public hearing because there were no requests to speak at a hearing. However, the Treasury Department and the IRS received comments in response to the proposed regulations.

Explanation of Provisions and Summary of Comments

After consideration of the comments, the final regulations adopt the proposed regulations as modified by this Treasury decision. The comments are discussed in this preamble.

1. *Elimination of the current de minimis partner rule*

Commenters generally agreed that the current de minimis partner rule is too broad, is easily abused, and/or is inconsistent with sound tax policy. The Treasury Department and the IRS agree with these commenters that the current de minimis partner rule should no longer be applicable.

2. *Alternative approaches*

The preamble to the proposed regulations requests comments on "how to reduce the burden of complying with the substantial economic effect rules, with respect to look-through partners, without diminishing the safeguards the rules provide." In response to this request, some of the commenters requested that future guidance in regulations amend the current de minimis partner rule, and other commenters suggested alternative approaches for de minimis partners and look-through partners. These alternative approaches are discussed in Part 2.a through 2.e of this preamble.

a. *Modification of current de minimis partner rule*

A commenter suggested amending the current de minimis partner rule by providing that the de minimis partner rule applies only if: (i) de minimis partners own less than a specified aggregate percentage (for example, 25 percent, 50 percent, or 80 percent) of the partnership; and (ii) the partnership has at least two non-de minimis partners.

b. *Reasonable assumptions approach*

One commenter suggested adopting a "reasonable assumptions rule" for de minimis partners and indirect partners. This commenter noted that a partnership must know the tax attributes of its partners in order to determine whether a partnership's allocations are substantial. However, this commenter also explained that many partnerships are comprised of partners that are passthrough entities and it is difficult for these partnerships to obtain information about the tax attributes of their ultimate partners. Thus, this commenter recommended that the Treasury

Department and the IRS permit a partnership to make reasonable assumptions about: (1) the tax attributes of any partner that owns (directly, indirectly, and through attribution) not more than a 5 percent interest in the capital or profits of the partnership (each, a de minimis partner); and (2) the identity and tax attributes of any person that owns an interest in the partnership indirectly through one or more "look-through entities" (within the meaning of §1.704–1(b)(2)(iii)(*d*)(*2*)) other than disregarded entities (each, an indirect partner). Under this approach, if a partnership makes reasonable inquiries regarding the tax attributes of all de minimis partners and indirect partners but is unable to obtain the necessary information, then the partnership would be permitted to make reasonable assumptions about the tax attributes of those partners, but only if, in the aggregate, those de minimis partners and indirect partners do not own more than a 30 percent interest in the profits and capital of the partnership.

This commenter further explained that, provided the partnership's assumptions are reasonable, allocations that would be substantial on the basis of those reasonable assumptions would be respected even if those assumptions later are determined to have been incorrect. According to this commenter, whether a partnership's assumptions are reasonable should be determined based on all of the facts and circumstances. This commenter provided several examples of reasonable and unreasonable assumptions (for example, if a partner is identifiable (by its name or otherwise) as a charitable organization or educational institution, it would be unreasonable for a partnership to assume that the partner is a fully taxable individual or corporation).

Similarly, another commenter suggested that the IRS establish "reasonable presumptions" as to the tax attributes of the owners of certain look-through entity partners. According to this commenter, these presumptions should be limited to situations in which the partnership does not know or have reason to know of the tax attributes of the owner of the look-through entity partner.

c. *Safe harbor presumptions*

Another commenter recommended that the Treasury Department and the IRS establish safe harbor presumptions for the tax attributes of de minimis partners that do not qualify for the de minimis partner rule and partners that own, directly or indirectly, through a look-through entity, less than 10 percent of the capital and profits of the partnership and are allocated less than 10 percent of each partnership item. The commenter proposed several safe harbor presumptions regarding the relevant tax attributes of such a partner based on the type of partner (for example, if the partner is a nonresident alien) and the type of income the partnership earns (for example, if the partnership earns effectively connected income).

d. *Deemed satisfaction of section 704(b) in limited situations*

Another commenter suggested amending the section 704(b) regulations to provide that in a limited number of situations, the partnership would be deemed to satisfy the partnership allocation regulations. According to this commenter, deemed satisfaction would apply to partnerships that qualify, for the current tax year and all prior tax years, as pro rata partnerships, de minimis service partnerships, or de minimis partnerships with de minimis partners. A partnership would be considered a pro rata partnership if all contributions to the partnership are cash; all items of partnership income, gain, loss, deduction, and credit are allocated pro rata based on the partners' relative contributions; all partnership liabilities are shared pro rata based on the partners' relative contributions; and all partnership distributions are made pro rata based on the partners' relative contributions. A partnership would qualify as a de minimis service partnership if the partnership has gross receipts of $5 million or less in each taxable year, 95 percent of the partnership's gross receipts is derived from services, and all partners are individuals who materially participate in the services of the partnership within the meaning of section 469(h). A partnership would be considered a de minimis partnership with de minimis partners if the aggregate fair market value (net of partnership liabilities) or tax basis of partnership property is $5 million or less at all times during the partnership taxable year, the partnership has gross receipts of $5 million or less in each taxable year, and no partner is allocated more than 10 percent of any partnership item.

e. *Other alternative approaches*

Commenters offered other alternative approaches, including lowering the de minimis percentage interest threshold and the income allocation threshold; providing a limitation or threshold on the amount of net taxable income that is reasonably expected to be earned by the partnership or allocated to the de minimis partner each year; prohibiting reliance on the de minimis partner rule if the partnership knows (or has reason to know) of the relevant tax attributes of the de minimis partner and such attributes would cause the allocations not to have substantial economic effect; or promulgating separate de minimis partner rules for large and small partnerships.

The Treasury Department and the IRS believe that the alternative approaches to reduce the burden of complying with the substantial economic effect rules described in Part 2.a through 2.e of this preamble require further consideration due to the issues raised by the complexity of the substantiality rules. Although commenters suggested that removal of the de minimis rule without providing other administrative relief would result in undue burden, the Treasury Department and the IRS have determined that tax administration is best served by providing in the final regulations that the current de minimis rule will no longer be applicable. The Treasury Department and the IRS may address alternative approaches in future guidance, and will consider the comments on alternative approaches at that time.

3. *Effective/Applicability date*

Whether an allocation is considered to be substantial is generally determined at the time the allocation becomes part of the partnership agreement. The final regulations provide that the de minimis partner rule does not apply to allocations that become part of the partnership agreement on or after December 28, 2012.

With respect to existing allocations, one commenter suggested that the de minimis partner rule was sufficiently flawed that it should be promptly removed, and that it should not continue to apply to allocations that became part of the partnership agreement prior to its removal. The Treasury Department and the IRS agree with this comment. Accordingly, these final regulations are effective, and therefore the de minimis partner rule of §1.704–1(b)(2)(iii)(*e*) is no longer applicable, for all partnership taxable years beginning on or after December 28, 2012, regardless of when the allocation became part of the partnership agreement. Thus, the substantiality of all partnership allocations, regardless of when they became part of the partnership agreement, must be retested without the benefit of the de minimis partner rule. For allocations in existing partnership agreements, the retest has to be as of the first day of the first partnership taxable year beginning on or after December 28, 2012.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these final regulations is Michala Irons, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.704–1(b)(2)(iii)(*e*) is revised to read as follows:

Section 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(*e*) De minimis rule—(*1*) *Partnership taxable years beginning after May 19, 2008 and beginning before December 28, 2012*. Except as provided in paragraph (b)(2)(iii)(*e*)(*2*) of this section, for purposes of applying this paragraph (b)(2)(iii), for partnership taxable years beginning after May 19, 2008 and beginning before December 28, 2012, the tax attributes of de minimis partners need not be taken into account. For purposes of this paragraph (b)(2)(iii)(*e*)(*1*), a de minimis partner is any partner, including a look-through entity that owns, directly or indirectly, less than 10 percent of the capital and profits of a partnership, and who is allocated less than 10 percent of each partnership item of income, gain, loss, deduction, and credit. See paragraph (b)(2)(iii)(*d*)(*6*) of this section for the definition of indirect ownership.

(*2*) *Nonapplicability of de minimis rule*. (*i*) *Allocations that become part of the partnership agreement on or after December 28, 2012*. Paragraph (b)(2)(iii)(*e*)(*1*) of this section does not apply to allocations that become part of the partnership agreement on or after December 28, 2012.

(*ii*) *Retest for allocations that become part of the partnership agreement prior to December 28, 2012*. If the de minimis partner rule of paragraph (b)(2)(iii)(*e*)(*1*) of this section was relied upon in testing the substantiality of allocations that became part of the partnership agreement before December 28, 2012, such allocations must be retested on the first day of the first partnership taxable year beginning on or after December 28, 2012, without regard to paragraph (b)(2)(iii)(*e*)(*1*) of this section.

* * * * *

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

Approved December 19, 2012.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on December 21, 2012, 4:15 p.m., and published in the issue of the Federal Register for December 28, 2012, 77 F.R. 76380)

Section 6041.—Information at Source

The Service extends guidance on the information reporting requirements for payments made to or on behalf of financially distressed homeowners under programs established pursuant to the Treasury Department's Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets and the Department of Housing and Urban Development's Emergency Homeowners' Loan Program. Notice 2011-14 and Rev. Proc. 2011-55 amplified and supplemented. See Notice 2013-7, page 477.

Section 6050H.—Returns Relating to Mortgage Interest Received in Trade or Business From Individuals

The Service extends guidance on the information reporting requirements for payments made to or on behalf of financially distressed homeowners under programs established pursuant to the Treasury Department's Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets and the Department of Housing and Urban Development's Emergency Homeowners' Loan Program. Notice 2011-14 and Rev. Proc. 2011-55 amplified and supplemented. See Notice 2013-7, page 477.

Section 6721.—Failure to File Correct Information Returns

The Service extends guidance on the information reporting requirements for payments made to or on behalf of financially distressed homeowners under programs established pursuant to the Treasury Department's Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets and the Department of Housing and Urban Development's Emergency Homeowners' Loan Program. Notice 2011-14 and Rev. Proc. 2011-55 amplified and supplemented. See Notice 2013-7, page 477.

Section 6722.—Failure to Furnish Correct Payee Statements

The Service extends guidance on the information reporting requirements for payments made to or on behalf of financially distressed homeowners under programs established pursuant to the Treasury Department's Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets and the Department of Housing and Urban Development's Emergency Homeowners' Loan Program. Notice 2011-14 and Rev. Proc. 2011-55 amplified and supplemented. See Notice 2013-7, page 477.

Part III. Administrative, Procedural, and Miscellaneous

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

Notice 2013–2

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code as in effect for plan years beginning before 2008. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), and the 24-month average segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the minimum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007. These rates reflect certain changes implemented by the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 (MAP–21). MAP–21 provides that for purposes of § 430(h)(2), the segment rates are limited by the applicable maximum percentage or the applicable minimum percentage based on the average of segment rates over a 25 year period.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

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

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

The composite corporate bond rate for December 2012 is 3.98 percent. Pursuant to Notice 2004–34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

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

For Plan Years Beginning in		Corporate Bond Weighted	Permissible Range		
Month	*Year*	Average	90%	to	100%
January	2013	5.01	4.51		5.01

YIELD CURVE AND SEGMENT RATES

Generally, except for certain plans under sections 104 and 105 of the Pension Protection Act of 2006, § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007–81, 2007–2 C.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007–81, the monthly corporate bond yield curve derived from December 2012 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of December 2012 are, respectively, 1.00, 3.57, and 4.77. The three 24-month average corporate bond segment rates applicable for January 2013, without adjustment by the applicable percentage of the 25-year average segment rates, are as follows:

24-Month Segment Rates Without Adjustment by 25-Year Average Segment Rates

First Segment	Second Segment	Third Segment
1.62	4.40	5.45

For plan years beginning in 2012, the 24-month average segment rates determined under § 430(h)(2)(C)(iv) must be not less than 90% nor greater than 110% of the 25-year average segment rates. Pursuant to Notice 2012–55, 2012–36 I.R.B. 332, the first, second, and third 25-year segment rates applicable for plan years beginning in 2012 are 6.15, 7.61, and 8.35, respectively. Therefore, for plan years beginning in 2012, the three adjusted 24-month average corporate bond segment rates applicable for January 2013, taking into account the applicable percentage of the 25-year average segment rates, are as follows:

Adjusted 24-Month Average Segment Rates,
Using Applicable Percentage of 25-Year Average Segment Rates

Applicable Month	For Plan Years Beginning in	First Segment	Second Segment	Third Segment
January 2013	2012	5.54	6.85	7.52

The 25-year average segment rates for the period ending September 30, 2012 have not been determined yet. The Service will issue additional guidance on the January 2013 adjusted 24-month average segment rates applicable for plan years beginning in 2013 when those 25-year average segment rates are determined.

30-YEAR TREASURY SECURITIES INTEREST RATES

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

The rate of interest on 30-year Treasury securities for December 2012 is 2.88 percent. The Service has determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in November 2042.

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in section 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88–73, 1988–2 C.B. 383, provides guidelines for determining the weighted average interest rate. The following rates were determined for plan years beginning in the month shown below.

For Plan Years Beginning in		30-Year Treasury Weighted	Permissible Range	
Month	*Year*	Average	90% to	105%
January	2013	3.60	3.24	3.78

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. For plan years beginning in 2008 through 2011, the applicable interest rates are the monthly spot segment rates blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007–81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for December 2012, taking into account the December 2012 30-year Treasury rate of 2.88 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2011	1.38	3.43	4.39
2012	1.00	3.57	4.77
2013	1.00	3.57	4.77

DRAFTING INFORMATION

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

Table I

Monthly Yield Curve for December 2012
Derived from December 2012 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	0.32	20.5	4.47	40.5	4.81	60.5	4.93	80.5	4.99
1.0	0.53	21.0	4.49	41.0	4.81	61.0	4.93	81.0	4.99
1.5	0.72	21.5	4.50	41.5	4.82	61.5	4.93	81.5	4.99
2.0	0.87	22.0	4.51	42.0	4.82	62.0	4.94	82.0	5.00
2.5	0.98	22.5	4.53	42.5	4.82	62.5	4.94	82.5	5.00
3.0	1.08	23.0	4.54	43.0	4.83	63.0	4.94	83.0	5.00
3.5	1.18	23.5	4.55	43.5	4.83	63.5	4.94	83.5	5.00
4.0	1.29	24.0	4.56	44.0	4.84	64.0	4.94	84.0	5.00
4.5	1.42	24.5	4.57	44.5	4.84	64.5	4.95	84.5	5.00
5.0	1.56	25.0	4.58	45.0	4.84	65.0	4.95	85.0	5.00
5.5	1.72	25.5	4.59	45.5	4.85	65.5	4.95	85.5	5.00
6.0	1.89	26.0	4.60	46.0	4.85	66.0	4.95	86.0	5.00
6.5	2.07	26.5	4.61	46.5	4.85	66.5	4.95	86.5	5.01
7.0	2.26	27.0	4.62	47.0	4.86	67.0	4.95	87.0	5.01
7.5	2.44	27.5	4.63	47.5	4.86	67.5	4.96	87.5	5.01
8.0	2.63	28.0	4.64	48.0	4.86	68.0	4.96	88.0	5.01
8.5	2.80	28.5	4.65	48.5	4.87	68.5	4.96	88.5	5.01
9.0	2.97	29.0	4.66	49.0	4.87	69.0	4.96	89.0	5.01
9.5	3.12	29.5	4.67	49.5	4.87	69.5	4.96	89.5	5.01
10.0	3.27	30.0	4.68	50.0	4.88	70.0	4.96	90.0	5.01
10.5	3.41	30.5	4.68	50.5	4.88	70.5	4.97	90.5	5.01
11.0	3.53	31.0	4.69	51.0	4.88	71.0	4.97	91.0	5.01
11.5	3.65	31.5	4.70	51.5	4.89	71.5	4.97	91.5	5.01
12.0	3.75	32.0	4.71	52.0	4.89	72.0	4.97	92.0	5.02
12.5	3.84	32.5	4.71	52.5	4.89	72.5	4.97	92.5	5.02
13.0	3.93	33.0	4.72	53.0	4.89	73.0	4.97	93.0	5.02
13.5	4.00	33.5	4.73	53.5	4.90	73.5	4.97	93.5	5.02
14.0	4.07	34.0	4.74	54.0	4.90	74.0	4.98	94.0	5.02
14.5	4.12	34.5	4.74	54.5	4.90	74.5	4.98	94.5	5.02
15.0	4.17	35.0	4.75	55.0	4.90	75.0	4.98	95.0	5.02
15.5	4.22	35.5	4.75	55.5	4.91	75.5	4.98	95.5	5.02
16.0	4.26	36.0	4.76	56.0	4.91	76.0	4.98	96.0	5.02
16.5	4.29	36.5	4.77	56.5	4.91	76.5	4.98	96.5	5.02
17.0	4.32	37.0	4.77	57.0	4.91	77.0	4.98	97.0	5.02
17.5	4.35	37.5	4.78	57.5	4.92	77.5	4.98	97.5	5.02
18.0	4.38	38.0	4.78	58.0	4.92	78.0	4.99	98.0	5.03
18.5	4.40	38.5	4.79	58.5	4.92	78.5	4.99	98.5	5.03
19.0	4.42	39.0	4.79	59.0	4.92	79.0	4.99	99.0	5.03
19.5	4.44	39.5	4.80	59.5	4.93	79.5	4.99	99.5	5.03
20.0	4.46	40.0	4.80	60.0	4.93	80.0	4.99	100.0	5.03

Extension of Guidance in Notice 2011–14 and Rev. Proc. 2011–55 for Participants in the HFA Hardest Hit Fund, the Emergency Homeowners' Loan Program, and Substantially Similar State Programs

Notice 2013–7

PURPOSE

This notice amplifies Notice 2011–14, 2011–11 I.R.B. 544, by extending through taxable year 2015 the safe harbor method for computing a homeowner's deduction for payments made on a home mortgage. This notice also amplifies Notice 2011–14 by extending through calendar year 2015 the relief for mortgage servicers and state housing finance agencies (State HFAs) from penalties relating to information reporting, and by advising the Department of Housing and Urban Development (HUD) that it may rely on Notice 2011–14 through calendar year 2015 to report to homeowners and the Internal Revenue Service the payments it makes to mortgage servicers. In addition, this notice amplifies Notice 2011–14 by revising the safe harbor method for computing a homeowner's deduction because of the extension of the deduction for mortgage insurance premiums that was enacted by section 204 of the American Taxpayer Relief Act of 2012, Pub. L. No. 112–240, 126 Stat. 2313 (ATRA).

This notice also amplifies Rev. Proc. 2011–55, 2011–47 I.R.B. 793, by extending its scope and effective date through calendar year 2015.

Finally, this notice supplements Notice 2011–14 and Rev. Proc. 2011–55 by updating the list of housing programs to which Notice 2011–14 and Rev. Proc. 2011–55 apply.

BACKGROUND

Notice 2011–14 provides guidance on the federal income tax consequences of, and information reporting obligations for, payments made to or on behalf of financially distressed homeowners under (1) programs designed by State HFAs (State Programs) with funds allocated from the Treasury Department's Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets (HFA Hardest Hit Fund), and (2) HUD's Emergency Homeowners' Loan Program (EHLP) and any existing state program that is substantially similar to the EHLP and is eligible to administer an allocation of funds from the EHLP (the substantially similar state programs, or SSSPs).

The Appendix in Notice 2011–14 lists all of the State Programs that, as of the date Notice 2011–14 was released, the Treasury Department had approved for funding from the HFA Hardest Hit Fund. Subsequent to the publication of Notice 2011–14, the Treasury Department continues to approve funding for additional State Programs. An updated list of State Programs for which the Treasury Department approves funding is available at *www.treasury.gov/HHF*. All of these programs are covered by Notice 2011–14, Rev. Proc. 2011–55, and this notice.

For taxable years 2010, 2011, and 2012, Notice 2011–14 provides a safe harbor method for determining the amount that a homeowner may deduct on his or her federal income tax return. Under the safe harbor method, a homeowner may deduct the sum of all payments the homeowner actually makes during a taxable year to the mortgage servicer, HUD, or the State HFA on the home mortgage, but not in excess of the sum of the amounts shown on Form 1098 in box 1 (Mortgage interest received), box 4 (Mortgage insurance premiums) for years 2010 and 2011 only, and box 5 (real property taxes). This safe harbor method of computing the homeowner's deduction applies for a taxable year if (1) the homeowner meets the requirements of §§ 163 and 164 to deduct all of the mortgage interest on the loan and all of the real property taxes on the principal residence, and (2) the homeowner participates in a State Program described in the Appendix to Notice 2011–14 in which the program payments could be used to pay interest on the home mortgage, or in the EHLP or an SSSP.

Section 204(a) of ATRA provides that § 163(h)(3)(E)(iv)(I) of the Internal Revenue Code is amended by striking December 31, 2011, and inserting in its place December 31, 2013. The effect of this amendment is to extend the deduction for qualified mortgage insurance premiums paid or accrued in, or properly allocable to, years 2012 and 2013.

Notice 2011–14 provides that the Service will not assert penalties under §§ 6721 and 6722 of the Code against a mortgage servicer that reports on Forms 1098, *Mortgage Interest Statement*, payments received under a State Program, the EHLP, or an SSSP during calendar years 2011 or 2012 if the servicer notifies homeowners that the amounts reported on the Forms 1098 are overstated because they include government subsidy payments.

Notice 2011–14 also provides that the Service will not assert penalties under §§ 6721 and 6722 against any State HFA for failing to file and furnish Forms 1098 for calendar years 2011 and 2012 if the State HFA provides each homeowner and the IRS a statement setting forth (1) the homeowner's name and taxpayer identification number (TIN), and (2) the amount of payments the State HFA made to a mortgage servicer under the State Program or the SSSP during that year (separately stating the amount the State HFA paid and the amount the homeowner paid). The statement the State HFA provides to the IRS must be a single statement that separately lists the names, TINs, and relevant payment amounts for each homeowner.

For calendar years 2011 and 2012, Notice 2011–14 advises HUD to provide each homeowner and the IRS a statement setting forth (1) the homeowner's name and TIN, and (2) the amount of payments HUD made to the mortgage servicer under the EHLP during that year (separately stating the amount HUD paid and the amount the homeowner paid). The statement HUD provides to the IRS should be a single statement that separately lists the names, TINs, and relevant payment amounts for each homeowner.

Rev. Proc. 2011–55 modifies Notice 2011–14 to specify the IRS office to which State HFAs and HUD should send the statement required by Notice 2011–14, and provides that State HFAs and HUD may, at their option, use Form 1098–MA, *Mortgage Assistance Payments*, to provide the information required by Notice 2011–14. Rev. Proc. 2011–55 is effective for calendar years 2011 and 2012 and applies to (1) State HFAs that make payments to mortgage servicers under a State Program or an SSSP, and (2) HUD for payments made to mortgage servicers under the EHLP.

APPLICATION

Income Tax Consequences to Homeowners

For taxable years 2010 through 2015, a homeowner may deduct on his or her Federal income tax return the lesser of—

- The sum of all payments on the home mortgage that the homeowner actually makes during a taxable year to the mortgage servicer, HUD, or the State HFA; and
- The sum of amounts shown on Form 1098 for mortgage interest received, real property taxes, and (for years 2010 through 2013 only) mortgage insurance premiums. (For Forms 1098 issued for 2010 and 2011, mortgage servicers report these amounts in Box 4 (Mortgage insurance premiums). On Form 1098 for 2012, Box 4 is unlabeled, but, pursuant to instructions, mortgage servicers should again report these amounts in Box 4.)

This safe harbor method of computing the homeowner's deduction applies for a taxable year if (1) the homeowner meets the requirements of §§ 163 and 164 to deduct all of the mortgage interest on the loan and all of the real property taxes on the principal residence, and (2) the homeowner participates in a State Program in which the program payments could be used to pay interest on the home mortgage, or the EHLP or an SSSP.

Information Reporting Obligations

The Service will not assert penalties under §§ 6721 and 6722 against a mortgage servicer that reports on Forms 1098 payments received under a State Program, the EHLP, or an SSSP during calendar years 2011 through 2015 if the servicer notifies homeowners that the amounts reported on the Form 1098 are overstated because they include government subsidy payments.

The Service will not assert penalties under §§ 6721 and 6722 against any State HFA for failing to file and furnish Forms 1098 for calendar years 2011 through 2015 if the State HFA provides each homeowner and the IRS a statement setting forth (1) the homeowner's name and TIN, and (2) the amount of payments the State HFA made to the mortgage servicer under the State Program or the SSSP during that year (separately stating the amount the State HFA paid and the amount the homeowner paid). Except as provided in Rev. Proc. 2011–55 regarding use of Form 1098–MA, the statement the State HFA provides to the IRS must be a single statement that separately lists the names, TINs, and relevant payment amounts for each homeowner.

In addition, for calendar years 2011 through 2015, HUD should provide each homeowner and the IRS a statement setting forth (1) the homeowner's name and TIN, and (2) the amount of payments HUD made to the mortgage servicer under the EHLP during that year (separately stating the amount HUD paid and the amount the homeowner paid). Except as provided in Rev. Proc. 2011–55, the statement HUD provides to the IRS should be a single statement that separately lists the names, TINs, and relevant payment amounts for each homeowner.

For calendar years 2011 through 2015, State HFAs and HUD may, at their option, use Form 1098–MA in accordance with Rev. Proc. 2011–55 to provide the information described in Notice 2011–14 instead of filing a single statement for the calendar year.

State Programs

The State Programs to which Notice 2011–14, Rev. Proc. 2011–55, and this notice apply are listed at *www.treasury.gov/HHF*. This list includes all of the State Programs that appeared in the Appendix to Notice 2011–14 as well as any additional programs that the Treasury Department has approved for funding from the HFA Hardest Hit Fund.

EFFECT ON OTHER DOCUMENTS

(1) Notice 2011–14 is amplified by extending the guidance relating to (a) the safe harbor method for computing a homeowner's deduction for payments made on a home mortgage through the taxable year 2015, and (b) information reporting for those payments through the calendar year 2015. Notice 2011–14 also is amplified by revising the safe harbor method for computing a homeowner's deduction to include mortgage insurance premiums paid or accrued for years 2012 and 2013.

(2) Rev. Proc. 2011–55 is amplified by extending its scope and effective date through calendar year 2015.

(3) Notice 2011–14 and Rev. Proc. 2011–55 are supplemented by identifying additional State Programs to which the notice and revenue procedure apply.

DRAFTING INFORMATION

The principal author of this notice is Shareen S. Pflanz of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Shareen S. Pflanz at (202) 622–4920 (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 1, § 280A.)

Rev. Proc. 2013–13

SECTION 1. PURPOSE

This revenue procedure provides an optional safe harbor method that individual taxpayers may use to determine the amount of deductible expenses attributable to certain business use of a residence during the taxable year. This safe harbor method is an alternative to the calculation, allocation, and substantiation of actual expenses for purposes of satisfying the requirements of § 280A of the Internal Revenue Code. This revenue procedure is effective for taxable years beginning on or after January 1, 2013.

SECTION 2. BACKGROUND

.01 Section 280A(a) generally disallows any deduction for expenses related to a dwelling unit that is used as a residence by the taxpayer during the taxable year. However, § 280A(c)(1) through (4) allow a deduction for expenses related to certain business or rental use of a dwelling unit, subject to the deduction limitation in § 280A(c)(5).

.02 Section 280A(c)(1) permits a taxpayer to deduct expenses that are allocable to a portion of the dwelling unit that is exclusively used on a regular basis (A) as the taxpayer's principal place of business for any trade or business, (B) as a place to meet with the taxpayer's patients, clients, or customers in the normal course of the taxpayer's trade or business, or (C) in the case of a separate structure that is not attached to the dwelling unit, in connection with the taxpayer's trade or business.

.03 Section 280A(c)(2) permits a taxpayer to deduct expenses that are allocable to space within the dwelling unit used on a regular basis for the storage of inventory or product samples held for use in the taxpayer's trade or business of selling products at retail or wholesale, if the dwelling unit is the sole fixed location of the trade or business.

.04 Section 280A(c)(3) permits a taxpayer to deduct expenses that are attributable to the rental of the dwelling unit or a portion of the dwelling unit.

.05 Section 280A(c)(4) permits a taxpayer to deduct expenses that are allocable to the portion of the dwelling unit used on a regular basis in the taxpayer's trade or business of providing day care for children, for individuals who have attained age 65, or for individuals who are physically or mentally incapable of caring for themselves.

.06 Section 280A(c)(5) limits the deductibility of expenses that relate to a use of a dwelling unit described in § 280A(c)(1) through (4) to the gross income derived from that use for the taxable year reduced by (1) the deductions allocable to the use that are allowable for the taxable year whether or not the unit is used as described in § 280A(c)(1) through (4) (for example, deductions for qualified residence interest, property taxes, and casualty losses); and (2) the allowable trade or business expenses that are not allocable to the use of the dwelling unit for the taxable year (for example, advertising, wages, and supplies).

.07 The Internal Revenue Service (Service) and the Treasury Department recognize that the calculation, allocation, and substantiation of allowable deductions attributable to the use of a portion of the taxpayer's residence for business purposes can be complex and burdensome for small business owners. Accordingly, the Service and the Treasury Department are providing this optional safe harbor method to reduce the administrative, recordkeeping, and compliance burdens of determining the allowable deduction for certain business use of a residence under § 280A. Under this safe harbor method, taxpayers determine their allowable deduction for business use of a residence by multiplying a prescribed rate by the square footage of the portion of the taxpayer's residence that is used for business purposes.

SECTION 3. SCOPE AND DEFINITIONS

.01 *In general*. This revenue procedure applies to a taxpayer who is an individual and who elects the safe harbor method provided by this revenue procedure to determine the deduction allowable under § 280A for the taxpayer's qualified business use of a home for the taxable year.

.02 *Qualified business use*. For purposes of this revenue procedure, "qualified business use" means (1) business use that satisfies the requirements of § 280A(c)(1), (2) business storage use that satisfies the requirements of § 280A(c)(2), or (3) day care services use that satisfies the requirements of § 280A(c)(4).

.03 *Home*. For purposes of this revenue procedure, "home" means a dwelling unit used by the taxpayer during the taxable year as a residence, as defined in §§ 280A(d) and (f)(1), including a dwelling unit leased by a taxpayer. However, only a dwelling unit that is § 1250 property (generally depreciable real property) and MACRS property (generally defined in § 1.168(b)–1(a)(2) as tangible, depreciable property subject to § 168 that is placed in service after December 31, 1986) qualifies as a home for purposes of this revenue procedure.

SECTION 4. APPLICATION

.01 *Computation of the safe harbor amount.*

(1) A taxpayer determines the amount of deductible expenses for a qualified business use of the home for the taxable year under the safe harbor method by multiplying the allowable square footage by the prescribed rate.

(2) The allowable square footage is the portion of a home used in a qualified business use of the home, but not to exceed 300 square feet.

(3) The prescribed rate is $5.00. The Service and the Treasury Department may update this rate from time to time as warranted.

(4) This safe harbor method is an alternative to the calculation and allocation of actual expenses otherwise required by § 280A. Accordingly, except as provided in section 4.04 of this revenue procedure, a taxpayer electing the safe harbor method for a taxable year cannot deduct any actual expenses related to the qualified business use of that home for that taxable year.

.02 *Reimbursement or other expense allowance arrangement*. The safe harbor method provided by this revenue procedure does not apply to an employee with a home office if the employee receives advances, allowances, or reimbursements for expenses related to the qualified business use of the employee's home under a reimbursement or other expense allowance arrangement (as defined in § 1.62–2) with his or her employer.

.03 *Year-by-year determination.* A taxpayer may elect from taxable year to taxable year whether to use the safe harbor method or to calculate and substantiate actual expenses for purposes of § 280A. A taxpayer elects the safe harbor method by using the method to compute the deduction for the qualified business use of a home on his or her timely filed, original federal income tax return for the taxable year. An election for any taxable year, once made, is irrevocable. A change from using the safe harbor method in one year to actual expenses in a succeeding taxable year, or *vice-versa*, is not a change in method of accounting and does not require the consent of the Commissioner.

.04 *Otherwise allowable deductions related to the home*. A taxpayer who itemizes deductions and uses the safe harbor method for a taxable year may deduct, to the extent allowed by the Code and regulations, any expense related to the home that is deductible without regard to whether there is a qualified business use of the home for that taxable year (for example, deductions for qualified residence interest, property taxes, and casualty losses). Taxpayers using the safe harbor method deduct these expenses as itemized deductions on Form 1040, Schedule A, and cannot deduct any portion of these expenses from the gross income derived from the qualified business use of the home, either for purposes of determining the net income derived from the business or for purposes of determining the gross income limitation provided in section 4.08(2) of this revenue procedure. However, taxpayers with a qualified business use of a home who also have a rental use of the same home under § 280A(c)(3) must allocate a portion of the expenses described in this section 4.04 to the rental use to the extent required under § 280A and any regulations thereunder.

.05 *Business deductions unrelated to qualified business use of a home.* A taxpayer using the safe harbor method for a taxable year may deduct, to the extent allowed by the Code and regulations, any trade or business expenses unrelated to the qualified business use of the home for that taxable year (for example, expenses for advertising, wages, and supplies).

.06 *Depreciation for a taxable year in which the safe harbor method is used*. A taxpayer using the safe harbor method for a taxable year cannot deduct any depreciation (including any additional first-year depreciation) or § 179 expense for the portion of the home that is used in a qualified business use of the home for that taxable year. The depreciation deduction allowable for that portion of the home for that taxable year is deemed to be zero.

.07 *Depreciation for a subsequent taxable year in which actual expenses are used.*

(1) Use of optional depreciation table. If a taxpayer uses the safe harbor method for a taxable year and calculates and substantiates actual expenses for purposes of § 280A for any subsequent taxable year, the taxpayer must calculate the depreciation deduction allowable in the subsequent year for the portion of the home that is used in a qualified business use of the home by using the appropriate optional depreciation table applicable for the property, regardless of whether the taxpayer used an optional depreciation table for the property in its placed-in-service year. The optional depreciation tables for MACRS property are provided in the annual IRS Publication 946, *How To Depreciate Property*. For purposes of this section 4.07, the appropriate optional depreciation table is based on the depreciation system, depreciation method, recovery period, and convention applicable to the § 1250 property in its placed-in-service year.

(2) Computation of the depreciation deduction allowable. A taxpayer described in section 4.07(1) of this revenue procedure computes the allowable depreciation deduction for a subsequent year by multiplying the remaining adjusted depreciable basis (as determined under § 1.168(k)–1(d)(2)(i)) allocable to the portion of the home used in a qualified business use by the annual depreciation rate for the applicable year specified in the appropriate optional depreciation table. Furthermore, the applicable year is the year that corresponds with the current taxable year based on the placed-in-service year of the property.

.08 *Limitations*.

(1) Taxpayers using this safe harbor method to compute their deduction must continue to satisfy all requirements of § 280A for determining their eligibility to claim a deduction. For example, a taxpayer may claim a deduction for a business use described in § 280A(c)(1) for a portion of a residence only if that portion is exclusively used on a regular basis for business purposes. As a further example, a taxpayer who is an employee may deduct expenses attributable to a business use of a residence described in § 280A(c)(1) only if that use is for the convenience of the taxpayer's employer.

(2) The amount of the deduction computed using the safe harbor method provided by this revenue procedure cannot exceed the gross income derived from the qualified business use of the home for the taxable year reduced by the business deductions described in section 4.05 of this revenue procedure (deductions unrelated to the qualified business use of a home). Any amount in excess of this gross income limitation is disallowed and may not be carried over and claimed as a deduction in any other taxable year.

(3) A taxpayer who uses the safe harbor method provided by this revenue procedure for a taxable year may not deduct in that taxable year any disallowed amount carried over from a prior taxable year during which the taxpayer calculated and substantiated actual expenses for purposes of § 280A. A taxpayer who calculated and substantiated actual expenses for purposes of § 280A in a prior taxable year and whose deduction was limited by the gross income limitation in § 280A(c)(5) may deduct the disallowed amount, subject to all other applicable restrictions, in the next succeeding taxable year in which the taxpayer calculates and substantiates actual expenses for purposes of § 280A.

(4) For purposes of determining the allowable square footage under section 4.01(2) of this revenue procedure, a taxpayer with a qualified business use of a home for a portion of the taxable year (for example, a seasonal business or a business that begins during the taxable year), or a taxpayer who changes the square footage for a qualified business use of a home during the taxable year (for example, an increase or decrease in the square footage), must determine the average of the monthly allowable square footage for the taxable year. In determining the average monthly allowable square footage, no more than 300 square feet may be taken into account for any one month, and a taxpayer shall only be treated as having a qualified business use of a home in a month in which the taxpayer had 15 or more days of a qualified business use of the home. For example, a taxpayer who files federal income tax returns on a calendar year basis, begins using 400 square feet of his or her home for a qualified business use on July 20, and continues that use until the end of the taxable year, has an average monthly allowable square footage of 125 square feet (300 square feet for each month August through December divided by the number of months in the taxable year ((300 + 300 + 300 + 300 + 300)/12)).

(5) Taxpayers sharing a home (for example, roommates or spouses, regardless of filing status), if otherwise eligible, may each use the safe harbor method provided by this revenue procedure, but not for a qualified business use of the same portion of the home. For example, a husband and wife, if otherwise eligible and regardless of filing status, may each use the safe harbor method for a qualified business use of the same home for up to 300 square feet of different portions of the home.

(6) A taxpayer who has more than one qualified business use of the same home for a taxable year and who elects the safe harbor method must use the safe harbor method for each qualified business use of the home. However, a taxpayer who has a qualified business use of a home and a rental use for purposes of § 280A(c)(3) of the same home cannot use the safe harbor method for the rental use. A taxpayer who has more than one qualified business use of the same home for a taxable year is limited to a maximum of 300 square feet. If a taxpayer who has more than one qualified

business use of the same home for the taxable year uses more than 300 square feet, then the taxpayer must allocate the square footage among the qualified business uses of the home. The taxpayer may allocate the square footage in any reasonable manner, but the taxpayer may not allocate more square footage to a qualified business use of a home than is actually used in that qualified business use of the home.

(7) A taxpayer with qualified business uses of more than one home for a taxable year may use the safe harbor method for only one home for that taxable year. However, the taxpayer, if otherwise eligible, may calculate and substantiate actual expenses for purposes of § 280A for the business use of any other homes for that taxable year.

.09 *Examples.* The following examples illustrate the application of sections 4.01 through 4.08 of this revenue procedure.

Example 1. *A*, a barber, is a sole proprietor who uses a room in his residence regularly and exclusively to meet with customers in the normal course of his trade or business throughout 2013. *A* determines that the room is 350 square feet and has a cost basis of $10,000. *A* placed the room in service in January 2013. *A* depreciates the room under § 168 as nonresidential real property using the optional depreciation table that corresponds with the general depreciation system, the straight-line method of depreciation, a 39-year recovery period, and the mid-month convention. During 2013, *A* earns $9,000 of gross income from the business and pays the following business expenses:

Supplies	$1,500
Advertising	800
Professional fees	300
Magazines/Subscriptions	700
Postage	100
Total	$3,400

A also pays the following expenses related to his home in 2013:

Mortgage interest	$10,000
Real property taxes	3,000
Homeowners' insurance	1,500
Utilities	2,400
Repairs	900
Total	$17,800

For 2013, *A* elects the safe harbor method provided by this revenue procedure. As provided in section 4.01 of this revenue procedure, *A* determines the amount of his deduction for the qualified business use of his home is $1,500 (300 sq. ft. X $5.00). As provided in section 4.04 of this revenue procedure, *A* deducts his mortgage interest ($10,000), and real property taxes ($3,000) as itemized deductions on his federal income tax return (Schedule A of Form 1040). As provided in section 4.05 of this revenue procedure, *A* deducts his ordinary and necessary business expenses that are unrelated to the qualified business use of his home ($3,400) as trade or business expenses (Schedule C of Form 1040) to the extent otherwise allowed by the Code and regulations.

As provided in section 4.01(4) of this revenue procedure, *A* may not deduct any portion of the actual expenses related to the qualified business use of his home for 2013 (homeowners' insurance, utilities, and repairs). As provided in section 4.06 of this revenue procedure, *A* may not deduct any depreciation for the room on his federal income tax return for 2013, and the depreciation deduction allowable for the room for 2013 is deemed to be zero. Accordingly, *A*'s adjusted depreciable basis in the room as of December 31, 2013, is $10,000. The gross income limitation in section 4.08(2) of this revenue procedure does not limit *A*'s deduction for the qualified business use of the home because the amount of the deduction, $1,500, does not exceed the gross income derived by *A* from the qualified business use of his home for the taxable year reduced by the business deductions described in section 4.05 of this revenue procedure, or $5,600 ($9,000 gross income - $3,400 of business deductions).

For 2014, *A* does not elect the safe harbor method and instead calculates and substantiates actual expenses for purposes of § 280A. Pursuant to section 4.07 of this revenue procedure, *A* must use the appropriate optional depreciation table for determining the depreciation deduction allowable for the room for 2014. The appropriate optional depreciation table provides that the depreciation rate for year two is 2.564%. Accordingly, *A* deducts depreciation for the room on his federal income tax return for 2014 in the amount of $256.40 ($10,000 X .02564). Consequently, *A*'s adjusted depreciable basis in the room as of December 31, 2014, is reduced to $9,743.60 ($10,000 - $256.40).

Example 2. *B*, an architect, is a sole proprietor who uses a room in her residence regularly and exclusively to meet with clients in the normal course of her trade or business throughout 2013. *B* determines that the room is 300 square feet and has a cost basis of $10,000. *B* placed the room in service in January 2010. For 2010, 2011, and 2012, *B* depreciates the room as nonresidential real property under the general depreciation system of § 168(a), using the straight-line method of depreciation, a 39-year recovery period, and the mid-month convention, but does not use the optional depreciation table. The adjusted depreciable basis of the room as of December 31, 2012, is $9,241.45.

For 2013, *B* elects the safe harbor method provided by this revenue procedure. Pursuant to section 4.06 of this revenue procedure, *B* does not deduct any depreciation for the room on her federal income tax return for 2013, and the depreciation deduction allowable for the room for 2013 is deemed to be zero. Accordingly, *B*'s adjusted depreciable basis in the room as of December 31, 2013, is $9,241.45.

For 2014, *B* resumes calculating and substantiating actual expenses for purposes of § 280A. Pursuant to section 4.07 of this revenue procedure, *B* must use the appropriate optional depreciation table for determining the depreciation deduction allowable for the room for 2014 because *B* used the safe harbor method provided by this revenue procedure for a prior taxable year. In 2014, the room has been placed in service by *B* for five years. The appropriate optional depreciation table provides that the depreciation rate for year five is 2.564%. Accordingly, *B* deducts depreciation for the room on her federal income tax return for 2014 in the amount of $256.40 ($10,000 X .02564). Consequently, *B*'s adjusted depreciable basis in the room as of December 31, 2014, is reduced to $8,985.05 ($9,241.45 - $256.40).

SECTION 5. EFFECT ON OTHER DOCUMENTS

Section 8.02 of Rev. Proc. 87–57, 1987–2 C.B. 687, is modified to read as follows:

.02 The optional depreciation tables specify schedules of annual depreciation rates to be applied to the unadjusted basis (or, if applicable, to the remaining adjusted depreciable basis as determined under § 1.168(k)–1(d)(2)(i) of the Income Tax Regulations) of property in each taxable year. If a taxpayer uses a table to compute the annual depreciation allowance for any item of property, the taxpayer must use the table to compute the annual depreciation allowances for the entire recovery period of such property, except as otherwise expressly provided by the Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin. Further, a taxpayer may not continue to use the table if there are any adjustments to the basis of the property for reasons other than (1) depreciation allowed or allowable, or (2) an addition or an improvement to such property that is subject to depreciation as a separate item of property. Use of the tables in this revenue procedure to compute depreciation allowances does not require the filing of any notice with the Internal Revenue Service.

Taxpayers use the appropriate table for any property based on the depreciation system, the applicable depreciation method, the applicable recovery period, and the applicable convention. The tables list the percentage depreciation rates to be applied to the unadjusted basis (or, if applicable, to the remaining adjusted depreciable basis as determined under § 1.168(k)–1(d)(2)(i)) of property in each taxable year.

In Tables 1–5, for the general depreciation system, the listed depreciation rates reflect the 200 percent declining balance method switching to the straight line method for property with applicable recovery periods of 3, 5, 7, or 10 years and the 150 percent declining balance method switching to the straight line method for property with applicable recovery periods of 15 or 20 years.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for taxable years beginning on or after January 1, 2013.

SECTION 7. REQUEST FOR COMMENTS

The Service and the Treasury Department request comments on all aspects of this revenue procedure.

Comments should be submitted in writing on or before April 15, 2013, and should include a reference to Rev. Proc. 2013–13. Submissions should be sent to:

Internal Revenue Service
Attn: CC:PA:LPD:PR
(Rev. Proc. 2013–13), Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions also may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Rev. Proc. 2013–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Alternatively, comments may be submitted electronically directly to the IRS via the following e-mail address: *Notice.comments@irscounsel.treas.gov*. Please include "Rev. Proc. 2013–13" in the subject line of any electronic communication. All comments will be available for public inspection and copying.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Christopher W. Call of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Christopher W. Call at (202) 622–4970 (not a toll-free call).

Part IV. Items of General Interest

Corrections to Publication 4436, General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), and Schedule R (Form 941).

Announcement 2013–11

The following announcement lists corrections to Publication 4436, *General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), and Schedule R (Form 941)*. Rev. Proc. 2012–46, 2012–50 I.R.B. 673, is corrected.

Correction:

Section 1.2 — “What’s New, # 11, Draft Forms”, currently reads:

“Draft Forms are no longer available on the IRS.gov website.”

It should read:

“Draft forms can be found at: *http://www.irs.gov/app/picklist/draftTaxForms.html* and can be used to develop interim formats until the forms are finalized.”

Correction:

Section 1.7 — “Reproducible Copies of Forms # 02, By mail — to:”, currently reads:

“Northrop Grumman Information Systems
7555 Colshire Drive
McLean, VA 22102”

It should read:

“National Technical Information Service
5301 Shawnee Road
Alexandria, VA 22312”

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2012–27 through 2012–52 is in Internal Revenue Bulletin 2012–52, dated December 27, 2012.

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