Internal Revenue
bulletin

Bulletin No. 1999–23
June 7, 1999

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 99–25, page 3.

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for June 1999.

ADMINISTRATIVE

Rev. Proc. 99–27, page 7.

Insurance companies; modified endowment contracts; uniform closing agreement. This revenue procedure provides procedures by which an issuer may remedy an inadvertent non-egregious failure to comply with the modified endowment contract rules under section 7702A of the Code.

REG–105312–98, page 14.

Proposed regulations under section 6045 of the Code relate to reporting payments of gross proceeds to attorneys. A public hearing is scheduled for September 22, 1999.

REG–113910–98, page 17.

Proposed regulations under section 263A of the Code relate to accounting for costs incurred in producing property and acquiring property for resale. A public hearing is scheduled for September 1, 1999.

Notice 99–31, page 6.

The deadline for special reformations under section 664 of the Code will be extended from June 8, 1999, to June 30, 2000.

Notice 99–32, page 6.

Hope Scholarship credit; Lifetime Learning credit; election. Final regulations under section 25A of the Code will permit taxpayers to elect to claim the Hope Scholarship Credit and the Lifetime Learning Credit by attaching Form 8863 to a timely filed original Federal income tax return or to an original or amended return filed after the due date of the return.

Finding Lists begin on page 25.

Department of the Treasury
Internal Revenue Service

Mission of the Service

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

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated 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 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 first 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 first Bulletin of the succeeding semiannual period, respectively.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1999. See Rev. Rul. 99–25, on this page.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of June 1999. See Rev. Rul. 99–25, on this page.

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

The adjusted applicable federal long-term rate is set forth for the month of June 1999. See Rev. Rul. 99–25, on this page.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1999. See Rev. Rul. 99–25, on this page.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1999. See Rev. Rul. 99–25, on this page.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1999. See Rev. Rul. 99–25, on this page.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of June 1999. See Rev. Rul. 99–25, on this page.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1999. See Rev. Rul. 99–25, on this page.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of June 1999. See Rev. Rul. 99–25, on this page.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1999. See Rev. Rul. 99–25, on this page.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1999. See Rev. Rul. 99–25, on this page.

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

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

Rev. Rul. 99–25

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for June 1999.

This revenue ruling provides various prescribed rates for federal income tax purposes for June 1999 (the current month.) Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 99–25 TABLE 1

Applicable Federal Rates (AFR) for June 1999

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-Term				
AFR	4.98%	4.92%	4.89%	4.87%
110% AFR	5.48%	5.41%	5.37%	5.35%
120% AFR	5.99%	5.90%	5.86%	5.83%
130% AFR	6.50%	6.40%	6.35%	6.32%
Mid-Term				
AFR	5.37%	5.30%	5.27%	5.24%
110% AFR	5.91%	5.83%	5.79%	5.76%
120% AFR	6.46%	6.36%	6.31%	6.28%
130% AFR	7.01%	6.89%	6.83%	6.79%
150% AFR	8.11%	7.95%	7.87%	7.82%
175% AFR	9.50%	9.28%	9.17%	9.11%
Long-Term				
AFR	5.79%	5.71%	5.67%	5.64%
110% AFR	6.38%	6.28%	6.23%	6.20%
120% AFR	6.97%	6.85%	6.79%	6.75%
130% AFR	7.56%	7.42%	7.35%	7.31%

REV. RUL. 99–25 TABLE 2

Adjusted AFR for June 1999

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	3.32%	3.29%	3.28%	3.27%
Mid-term adjusted AFR	3.91%	3.87%	3.85%	3.84%
Long-term adjusted AFR	4.85%	4.79%	4.76%	4.74%

REV. RUL. 99–25 TABLE 3

Rates Under Section 382 for June 1999

Adjusted federal long-term rate for the current month	4.85%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.85%

REV. RUL. 99–25 TABLE 4	
Appropriate Percentages Under Section 42(b)(2) for June 1999	
Appropriate percentage for the 70% present value low-income housing credit	8.30%
Appropriate percentage for the 30% present value low-income housing credit	3.56%

REV. RUL. 99–25 TABLE 5	
Rate Under Section 7520 for June 1999	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	6.4%

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1999. See Rev. Rul. 99–25, page 3.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1999. See Rev. Rul. 99–25, page 3.

Section 7702A.—Modified Endowment Contract Defined

Procedures are provided by which an issuer may remedy an inadvertent non-egregious failure to comply with the modified endowment contract rules under § 7702A. See Rev. Proc. 99–27, page 7.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 1999. See Rev. Rul. 99–25, page 3.

Part III. Administrative, Procedural, and Miscellaneous

Guidance Regarding Section 664 Regulations

Notice 99–31

This notice informs taxpayers that the deadline for special reformations of charitable remainder unitrusts (CRUTs) provided in § 1.664–3(a)(1)(i)(*f*)(*3*) of the Income Tax Regulations will be extended from June 8, 1999, until June 30, 2000. This notice also explains that the term "legal proceedings" in § 1.664–3(a)(1)-(i)(*f*)(*3*) includes certain non-judicial reformations provided they are completed by June 30, 2000.

BACKGROUND

Section 1.664–3(a)(1)(i)(*c*) contains the rules for CRUTs that use a combination of methods to compute the unitrust amount. If certain requirements are satisfied, the governing instrument of a CRUT may provide that the unitrust amount is computed using one of the income exception methods during an initial period and thereafter using the fixed percentage method (flip provision). The same fixed percentage must be used throughout the term of the CRUT.

Under § 1.664–3(a)(1)(i)(*f*)(*1*), the flip provision is available for CRUTs created on or after December 10, 1998. However, § 1.664–3(a)(1)(i)(*f*)(*3*) permits reformations of a CRUT whose governing instrument either contains an impermissible flip provision or uses only one of the income exception methods. Such a CRUT may be reformed to include a permitted flip provision if the trustee begins legal proceedings to reform by June 8, 1999.

DISCUSSION

Since the issuance of § 1.664–3(a)(1)-(i)(*f*)(*3*), a number of practitioners have requested additional time to begin legal proceedings to reform a CRUT. The Treasury Department and the Service also understand that there may be state law impediments to meeting the June 8, 1999, deadline. In response, the Treasury Department and the Service intend to amend § 1.664–3(a)(1)(i)(*f*)(*3*) to extend the June 8, 1999, deadline to June 30, 2000.

Many practitioners have also inquired whether the term "legal proceedings" in § 1.664–3(a)(1)(i)(*f*)(*3*) requires a judicial reformation if non-judicial reformations are permitted under state law. The Treasury Department and the Service will clarify that the term "legal proceedings" includes a non-judicial reformation that is valid under state law, but that a non-judicial reformation must be completed by June 30, 2000.

Taxpayers seeking a non-judicial reformation should ascertain what their state law requires for such a reformation to be valid. For example, in some states, a non-judicial reformation requires the consent of all beneficiaries, including potential beneficiaries. In addition, in some states, the state's Attorney General has jurisdiction over charitable remainder trusts and must be notified of or consent to a reformation on behalf of the named or unnamed charitable beneficiaries. In some cases, the state's Attorney General may more closely oversee charitable remainder trusts in which the specific charitable organization is not named in the governing instrument or is subject to change by the grantor or another person.

EFFECTIVE DATE

The amendments to § 1.664–3(a)(1)-(i)(*f*)(*3*) described in this notice will be effective December 10, 1998.

DRAFTING INFORMATION

The principal author of this notice is Mary Beth Collins of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Collins on (202) 622-3080 (not a toll-free call).

Election to Claim Education Tax Credit

Notice 99–32

PURPOSE

This notice announces that the final regulations under § 25A of the Internal Revenue Code will permit taxpayers to elect to claim the Hope Scholarship Credit and the Lifetime Learning Credit by attaching Form 8863, Education Credits (Hope and Lifetime Learning Credits), to a Federal income tax return (or amended return) for the taxable year in which the credit is claimed.

BACKGROUND

Section 25A provides two education tax credits, the Hope Scholarship Credit and the Lifetime Learning Credit. In general, § 25A provides that, if certain requirements are met, a taxpayer may claim an education tax credit based on the qualified tuition and related expenses of the taxpayer, the taxpayer's spouse, and any dependent of the taxpayer for whom the taxpayer properly claims a dependency deduction under § 151. The education tax credits are available for taxable years beginning after 1997. Section 25A(e)(1) provides that a taxpayer must elect to claim an education tax credit.

DISCUSSION

On January 6, 1999, the Treasury Department and the Internal Revenue Service issued proposed regulations under § 25A. *See* 64 Fed. Reg. 794 (1999). Section 1.25A–1(d) of the proposed regulations provides that no education tax credit is allowed unless a taxpayer elects to claim the credit on the taxpayer's timely filed (including extensions) Federal income tax return for the taxable year in which the credit is claimed. The proposed regulations provide that the election is made by attaching Form 8863 to that Federal income tax return.

The Treasury Department and the Service have determined that taxpayers should be able to make the election under § 25A on an original or amended return. Thus, the regulations when finalized will provide that a taxpayer claims an education tax credit by attaching Form 8863 to a Federal income tax return for the taxable year in which the credit is claimed. The election procedure provided in the final regulations will apply to taxable years beginning after 1997. Therefore,

for taxable year 1998 and later years, a taxpayer may elect to claim an education tax credit by attaching Form 8863 to a timely filed original Federal income tax return, or an original Federal income tax return or an amended return filed after the due date of the return and before the expiration of the period of limitation for filing a claim for credit or refund for the taxable year in which the credit is claimed.

DRAFTING INFORMATION

The principal author of this notice is Donna Welch of the Office of the Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice contact her on (202) 622-4910 (not a toll-free call).

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26 CFR § 301.7121-1: Closing agreements.
(Also Part I, section 7702A)

Rev. Proc. 99–27

SECTION 1. PURPOSE

This revenue procedure provides the procedures by which an issuer may remedy an inadvertent non-egregious failure to comply with the modified endowment contract rules under § 7702A of the Internal Revenue Code.

SECTION 2. BACKGROUND

.01 *Definition of a modified endowment contract ("MEC").*

(1) Section 7702A(a) provides that a life insurance contract is a MEC if the contract—

(a) is entered into on or after June 21, 1988, and fails to meet the "7-pay test" of § 7702A(b), or

(b) is received in exchange for a contract described in paragraph (a) of this section 2.01(1).

(2) A contract fails to meet the 7-pay test if the accumulated amount paid under the contract at any time during the first 7 contract years exceeds the sum of the net level premiums which would have to be paid on or before such time if the contract were to provide for paid-up "future benefits" (as defined in §§ 7702A(e)(3) and 7702(f)(4)) after the payment of 7 level annual premiums.

(3) Section 72(e)(11) provides that, for purposes of determining amounts includible in gross income, all MECs issued by the same company to the same contract holder during any calendar year are treated as one MEC.

.02 *Tax treatment of amounts received under a MEC.* Section 72(e)(10) provides that a MEC is subject to the rules of § 72(e)(2)(B), which tax non-annuity distributions on an income-out-first basis, and the rules of § 72(e)(4)(A) (as modified by §§ 72(e)(10)(A)(ii) and 72(e)-(10)(B)), which generally deem loans and assignments or pledges of any portion of the value of a MEC to be non-annuity distributions. Moreover, under § 72(v), the portion of any annuity or non-annuity distribution received under a MEC that is includible in gross income is subject to a 10% additional tax unless the distribution is made on or after the date on which the taxpayer attains age 59½, is attributable to the taxpayer's becoming disabled (within the meaning of § 72(m)(7)), or is part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and the taxpayer's beneficiary.

.03 *Need for a correction mechanism.* The Internal Revenue Service ("Service") has become aware of situations in which, as a result of inadvertent non-egregious failures to comply with the MEC rules, life insurance premiums have been collected which exceed the 7-pay limit provided by § 7702A(b). This may produce significant unforeseen tax consequences for the contract holders. To allow issuers to remedy such situations, the Service under the circumstances described below will enter into closing agreements which will provide that contracts identified in the closing agreements will not be treated as MECs.

SECTION 3. DEFINITIONS

The following definitions and rules apply solely for purposes of this revenue procedure.

.01 *Testing period.* The 7-year period described in § 7702A(b) or such additional period as may be required under § 7702A(c)(3) if a contract undergoes a material change.

.02 *Amount paid.* The amount paid under a contract in any "contract year" (as defined in § 7702A(e)(2)) equals the premiums paid for the contract during the year, reduced by amounts to which § 72(e) applies (determined without regard to § 72(e)(4)(A)) but not including amounts includible in gross income. For this purpose, premiums paid do not include—

(1) any portion of any premium paid during the contract year that is returned (with interest) to the contract holder within 60 days after the end of the contract year in order to comply with the 7-pay test, or

(2) the "cash surrender value" (as defined in § 7702(f)(2)(A)) of another life insurance contract (other than a contract that fails the 7-pay test) exchanged for the contract.

.03 *7-pay premium.* (1) *In general.* Except as otherwise provided in section 3.03(2) of this revenue procedure, the 7-pay premium for a contract is the net level premium (computed in accordance with the rules in § 7702A(c)) that would have to be paid for the contract if the contract were to provide for paid up future benefits after the payment of 7 level annual premiums.

(2) *7-pay premium for a contract that undergoes a material change.* If a contract (other than a contract that fails the 7- pay test) is materially changed, the contract is treated as newly issued on the date of the material change and the 7-pay premium for the changed contract is an amount equal to the excess, if any, of—

(a) the net level premium (computed in accordance with the rules in § 7702A(c)) that would have to be paid for the changed contract if the contract were to provide for paid up future benefits after the payment of 7 level annual premiums, over

(b) a "proportionate share of the cash surrender value" (as defined in section 3.04 of this revenue procedure) under the contract.

(3) *Assumed 7-pay premium.* The 7-pay premium assumed by the issuer when the contract was issued.

.04 *Proportionate share of cash surrender value.* The proportionate share of the cash surrender value of a contract is the amount obtained by multiplying—

(1) the "cash surrender value" (as defined in § 7702(f)(2)(A)) of the contract, by

(2) a fraction, the numerator of which is the net level premium (computed in accordance with the rules in § 7702A(c)) that would have to be paid

for the changed or new contract if such contract were to provide for paid up future benefits after the payment of 7 level annual premiums, and the denominator of which is the net single premium (determined using the rules in § 7702) for such contract at that time.

.05 *Overage.* A contract's overage is the amount of the excess, if any, of—

(1) the sum of amounts paid under the contract during the testing period for the contract year and all prior contract years, over

(2) the sum of the 7-pay premiums for the contract year and all prior contract years of the testing period.

.06 *Overage earnings.* The overage earnings for a contract year is the amount obtained by multiplyingó

(1) the sum of a contract's overage for the contract year and its cumulative overage earnings for all prior contract years, by—

(2) the earnings rate set forth in section 3.07 of this revenue procedure.

.07 *Earnings rates.* (1) Contracts other than variable contracts. Except as otherwise provided in sections 3.07(3) and 3.07(8) of this revenue procedure, the earnings rate applicable to a contract year is the "general account total return" (as defined in section 3.07(2) of this revenue procedure) for the calendar year in which the contract year begins.

(2) *General account total return.* The general account total return is the calendar year arithmetic average of the monthly interest rates described as Moody's Corporate Bond Yield Average - Monthly Average Corporates as published by Moody's Investors Service Inc., or any successor thereto.

(3) *Variable contracts described in § 817(d). (a) Pre-1999 contract years.* The earnings rate applicable to a contract year that begins before January 1, 1999, is the rate set forth in the following table for the calendar year in which the contract year begins.

Calendar Year	Earnings Rate
1988	13.5%
1989	17.4%
1990	1.4%
1991	25.4%
1992	5.9%
1993	13.9%
1994	–1.0%
1995	23.0%
1996	14.3%
1997	17.8%
1998	19.7%

(b) *Post-1998 contract years.* Except as otherwise provided in section 3.07(8), the earnings rate applicable to a contract year that begins after December 31, 1998, is equal to the sum of—

(i) 10 percent of the general account total return (as defined in section 3.07(2) of this revenue procedure), and

(ii) 90 percent of the "separate account total return" (as defined in section 3.07(4) of this revenue procedure), for the calendar year in which the contract year begins.

(4) *Separate account total return.* Except as otherwise provided in section 3.07(8), the separate account total return equals—

(a) 75 percent of the "equity fund total return" (as defined in section 3.07(5) of this revenue procedure), plus

(b) 25 percent of the "bond fund total return" (as defined in section 3.07(6) of this revenue procedure), less

(c) 1.1 percentage point.

(5) *Equity fund total return.* The equity fund total return equals—

(a) the "calendar year percentage return" (as defined in section 3.07(7) of this revenue procedure) represented by the end-of-year values of the Standard and Poor's (S&P) 500 Total Return Index, with daily dividend reinvestment, as published by The McGraw-Hill Companies, Inc., or any successor thereto, less

(b) 1.5 percentage point.

(6) *Bond Fund Total Return.* The bond fund total return equals—

(a) the "calendar year percentage return" (as defined in section 3.07(7) of this revenue procedure) represented by the end-of-year values of the Merrill Lynch Corporate Bond Master Bond Index, Total Return, as published by Merrill Lynch & Company, Inc., or any successor thereto, less

(b) 1.0 percentage point.

(7) *Calendar year percentage return.* The calendar year percentage return for an index described in section 3.07(5) or section 3.07(6) of this revenue procedure is calculated by–

(a) dividing the end-of-year value of the index for the calendar year by the end-of-year value of the index for the immediately preceding calendar year, and

(b) subtracting 1 from the result obtained under paragraph (a) of this section 3.07(7).

(8) If the general account total return or the separate account total return for a calendar year cannot be determined because the calendar year in which the contract year begins has not ended, then the earnings rate for the contract year (or portion thereof) is determined using the general account total return and, if applicable, the average separate account total return, for the 3 calendar years immediately preceding the calendar year in which the contract year begins.

.08 *Proportionate share of overage earnings allocable to taxable distributions.* The proportionate share of overage earnings allocable to taxable distributions under a contract is the amount obtained by multiplying—

(1) the total amount of the taxable distributions under the contract, by

(2) a fraction, the numerator of which is the contract's cumulative overage earnings and the denominator of which is the total income on the contract.

.09 *Total income on a contract.* The total income on a contract as of any date is an amount equal to the excess, if any, of—

(1) the contract's cash surrender value (as defined in § 7702(f)(2)(A)) on such date, over

(2) the premiums paid under the contract before such date, reduced by amounts to which § 72(e) applies (determined without regard to § 72(e)(4)(A)) but not including amounts includible in the contract holder's gross income.

.10 *Distribution frequency factor.* The distribution frequency factor for a contract is—

(1) .8, if—

(a) the interest rate with respect to any portion of a policy loan that could be made under the contract at any time (including policy loans that could be made after a contractually specified date in the future) is guaranteed not to exceed the sum of:

(i) 1 percentage point, plus

(ii) the rate at which earnings are credited to the portion of the con-

tract's cash surrender value (as defined in § 7702(f)(2)(A)) that is allocable to such portion of the policy loan; or

(b) the contract holder has an option to make a partial withdrawal of the contract's cash surrender value that reduces the "death benefit" (as defined in § 7702(f)(3)) under the contract by less than an amount determined by multiplying—

(i) the death benefit under the contract immediately before the withdrawal, by

(ii) the percentage obtained by dividing the withdrawn amount by the contract's cash surrender value (as defined in § 7702(f)(2)(A)) immediately before the withdrawal; and

(2) .5 for all other contracts.

.11 *Applicable percentage.* The applicable percentage for a contract is-

(1) 15%, if the death benefit under the contract is less than $50,000,

(2) 28% if the death benefit under the contract is equal to or exceeds $50,000 but is less than $180,000, and

(3) 36%, if the death benefit under the contract is equal to or exceeds $180,000.

.12 *Reported amount.* The reported amount for a contract is the amount that—

(1) the issuer reports on a timely filed information return as includible in the contract holder's gross income, or

(2) the contract holder includes in gross income on a timely filed income tax return.

.13 *Aggregation of contracts.* All MECs issued by the same issuer to the same contract holder during any calendar year are treated as one MEC.

SECTION 4. SCOPE

.01 *Applicability.* Except as provided in sections 4.02 and 4.03 of this revenue procedure, the issuer of a contract can use this revenue procedure to remedy the failure of the contract to comply with the requirements of § 7702A. See section 8 of this revenue procedure, below, for its date of expiration.

.02 *Inapplicability.* This revenue procedure does not apply to a MEC if—

(1) the contract insures the life of any individual (other than a "key person" as defined in § 264(e)(3)) who is or was-

(a) an officer, director, or employee of, or

(b) financially interested in, any trade or business carried on by the contract holder;

(2) the contract's status as a MEC resulted from a failure to comply with the requirements of § 7702A that—

(a) are attributable to one or more defective interpretations or positions that the Service determines to be a significant feature of a program to sell investment oriented contracts, or

(b) arises where the controlling statutory provision, as supplemented by any legislative history or guidance published by the Service, is clear on its face and the Service determines that failure to follow the provision results in a significant increase in the investment orientation of a contract; or

(3) except as provided in this section 4.02(3), the issuer previously entered into a closing agreement to remedy a failure of any contract to comply with the requirements of § 7702A. Upon an application by the issuer setting forth unusual or special facts and circumstances, the Service in its sole discretion may waive the limitation imposed by this section 4.02(3). However, the Service will not waive the limitation if the issuer requests to enter into a closing agreement to cure the same or similar failures to comply with the requirements of § 7702A that were identified in a previous closing agreement. Examples of unusual or special facts and circumstances include:

(a) The issuer analyzed each of its contracts as of the date of its first submission under this revenue procedure, using all of the legal and factual assumptions described in its first submission, and requested a closing agreement for all of its contracts eligible for relief under this revenue procedure to remedy the contracts' failure comply with the requirements of § 7702A. The issuer subsequently acquired a company that had inadvertently issued contracts that failed to comply with the requirements of § 7702A, which had not previously requested a closing agreement to remedy the failure of any of its contracts to comply with the requirements of § 7702A. In this situation, the issuer may request a closing agreement with respect to all of the acquired company's contracts that otherwise are eligible for relief under this revenue procedure.

(b) The issuer analyzed each of its contracts as of the date of its first submission under this revenue procedure, using all legal and factual assumptions described in its first submission, and requested a closing agreement for each contract eligible for relief under this revenue procedure. The issuer subsequently discovers that it inadvertently failed to identify other legal and factual assumptions not described in its first submission, which would cause the same and additional contracts to fail to comply with the requirements of § 7702A. In this situation, the issuer may request a closing agreement for all of its contracts otherwise eligible for relief under this revenue procedure to remedy the contracts' failure to comply with the requirements of § 7702A based on the combination of its previously and its newly identified legal and factual assumptions.

.03 *Examples.* Pursuant to section 4.02(2) of this revenue procedure, this revenue procedure does not apply to a MEC if—

(1) the contract provides for paid-up future benefits after the payment of less than 7 level annual premiums,

(2) the amount paid under the contract in any contract year of the testing period exceeds 300 percent of the 7-pay premium for the contract year, or

(3) the cash surrender value of the contract (within the meaning of § 7702(f)-(2)(A)) exceeded (or was illustrated or projected to exceed) the contract holder's investment in the contract (as defined in § 72(e)(6)) within 3 years after the issuance of the contract and the assumed 7-pay premium for the contract was more than 150 percent of the correct 7-pay premium for the contract.

SECTION 5. PROCEDURE

.01 *Request for a ruling.* An issuer that seeks relief under this revenue procedure must submit a request for a ruling that meets the requirements of Rev. Proc. 99–1, 1999–1 I.R.B. at 6 (or any successor). Additionally, the submission must contain the following information:

(1) a specimen copy of each contract form;

(2) the policy number for each contract;

(3) the taxpayer identification number of each contract holder;

(4) the original issue date of each contract;

(5) the death benefit (as defined in section 7702(f)(3)) under each contract;

(6) the 7-pay premium assumed by the issuer when the contract was issued;

(7) the cash surrender value (within the meaning of § 7702(f)(2)(A)) of each contract at the end of each contract year;

(8) a description of the defect[s] that caused the contract[s] to fail to comply with the 7-pay test, including an explanation of how and why the defect[s] arose;

(9) a description of the administrative procedures the issuer has implemented to ensure that none of its contracts will inadvertently fail the 7-pay test in the future;

(10) a description of any material change[s] in the benefits under (or in the other terms of) any contract together with the date[s] on which the material change[s] occurred;

(11) for any contract with regard to which a contract holder directly or indirectly received (or was deemed to have received) any distribution to which § 72 applies—

(a) the date and amount of each distribution,

(b) the amount of the distribution includible in the contract holder's gross income,

(c) the amount of gross income reported to the contract holder and to the Service on a timely filed information return as a result of the distribution,

(d) the date on which the contract holder attained [or will attain] age 59½,

(e) whether the distribution is attributable to the contract holder becoming disabled (within the meaning of § 72(m)(7)), and,

(f) whether the distribution is part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the contract holder or the joint lives (or joint life expectancies) of the contract holder and his or her beneficiary;

(12) a template (see, for example, section 5.04(3) of this revenue procedure) setting forth the following information for each contract:

(a) the cumulative amounts paid under the contract within each contract year of the testing period;

(b) the contract's cumulative 7-pay premium;

(c) the overage, if any, for each contract year;

(d) the earnings rate applicable for each contract year;

(e) the overage earnings for each contract year; and

(13) representations, signed under penalties of perjury by a representative of the issuer with authority to sign tax returns on behalf of the issuer, that—

(a) no contract identified in the ruling request insures the life of any individual (other than a "key person" as defined in § 264(e)(3)) who is or was an officer, director, or employee of, or financially interested in, any trade or business carried on by the contract holder;

(b) no contract identified in the ruling request provides for paid-up future benefits after the payment of less than 7 level annual premiums;

(c) no contract identified in the ruling request had an amount paid in any contract year of the testing period that exceeded 300 percent of the 7-pay premium for such contract year;

(d) none of the contracts identified in the ruling request meet both of the following conditions:

(i) the assumed 7-pay premium for the contract exceeded 150 percent of the correct 7-pay premium for such contract; and

(ii) the cash surrender value of the contract (within the meaning of § 7702(f)(2)(A)) exceeded the contract holder's investment in the contract (as defined in § 72(e)(6)) within three years after the issuance of the contract; and

(e) set forth the details of any previous request by the issuer to cure any failure of any contract to comply with the requirements of § 7702A.

.02 *Time for filing request.* The request for a ruling must be filed on or before May 31, 2001.

.03 *Closing agreement.* The issuer also must submit a proposed closing agreement, executed by the issuer, in substantially the same form as the model closing agreement in section 6 of this revenue procedure. The amount shown in section 1(A) of the closing agreement is the sum of the amounts required to be paid (determined under section 5.04 of this revenue procedure) for all of the contracts covered by the agreement.

.04 *Determination of amount required to be paid with regard to a contract.*

(1) Except as provided in section 5.04(2) of this revenue procedure, the amount required to be paid with regard to a contract is the sum of—

(a) the income tax (determined using the applicable percentage for the contract under section 3.11 of this revenue procedure) and the additional tax under section 72(v) with regard to amounts (other than reported amounts (as defined in section 3.12 of this revenue procedure)) received (or deemed received) under the contract during the period commencing with the date 2 years before the date on which the contract first failed to satisfy the MEC rules and ending on the effective date of the closing agreement;

(b) any interest computed under § 6621(a)(2) as if the amounts determined under section 5.04(1)(a) of this revenue procedure are underpayments by the contract holder[s] for the tax year[s] in which the amounts are received (or deemed received); and

(c) an amount, not less than $0, obtained by multiplying—

(i) the excess, if any, of the contract's cumulative overage earnings over the proportionate share of overage earnings allocable to taxable distributions under the contract, by

(ii) the applicable percentage for the contract, and by

(iii) the distribution frequency factor for the contract under section 3.10 of this revenue procedure.

(2) *Special rule for pre-1999 contracts with de minimis overage earnings.* If the overage earnings of a contract issued before January 1, 1999, at all times during the testing period do not exceed $75, then the amount required to be paid with regard to the contract is determined without regard to paragraphs (a) and (b) of section 5.04(1) of this revenue procedure.

(3) *Examples of the determination of the amount required to be paid with regard to a contract.*

(a) *Example 1.* A, an individual, purchases a life insurance contract other than a contract described in sections 3.07(3), 4.02(1), or 4.02(2) of this revenue procedure. The death benefit of the contract exceeds $180,000. The net level premium (assuming paid-up future benefits after 7 annual premium payments) for the contract is $10,490. The contract provides that, within 60 days after the end of a contract year, the issuer will return (with

interest) the amount of any excess premium that would cause the contract to be a MEC under § 7702A.

The interest rate on all portions of any policy loans will always exceed the rate at which interest is credited to the contract's associated cash value by more than 1 percentage point. A partial withdrawal of the cash surrender value (within the meaning of § 7702(f)(2)(A)) always reduces the death benefit by an amount not less than the amount determined by multiplying the death benefit immediately before the withdrawal by the percentage obtained by dividing the withdrawn amount by the cash surrender value immediately before the withdrawal.

A pays a premium of $10,000 when the contract is issued on January 1, 1991. At the beginning of each of the next 6 contract years, A pays additional premiums of $10,750, $10,800, $10,700, $11,500, $11,000, and $10,000, respectively. Due to an inadvertent error, the issuer fails to return any of the excess premiums.

The issuer desires to enter into a closing agreement to remedy the failure to comply with § 7702A. The issuer has not previously used this revenue procedure to remedy the failure of any contract to comply with the MEC rules.

Pursuant to section 5.01(12) of this revenue procedure, the issuer prepares the following template with regard to the contract.

Contract Year	Cumulative Premiums Paid	Cumulative 7-Pay Premiums	Overage	Earnings Rate	Overage Earnings
1 (1991)	10,000	10,490	0	9.2%	0
2 (1992)	20,750	20,980	0	8.6%	0
3 (1993)	31,550	31,470	80	7.5%	6.00
4 (1994)	42,250	41,960	290	8.3%	24.57
5 (1995)	53,750	52,450	1,300	7.8%	103.78
6 (1996)	64,750	62,940	1,810	7.7%	149.71
7 (1997)	74,750	73,430	1,320	7.5%	120.30

Prior to A's payment of the $10,800 premium at the beginning of contract year 3, the cumulative premiums paid for the contract do not exceed the contract's cumulative 7-pay premiums. Therefore, there are no overage earnings in contract years 1 and 2.

Upon payment of the $10,800 premium at the beginning of contract year 3, however, the cumulative amount paid for the contract ($31,550) exceeds the contract's cumulative 7-pay premiums ($31,470) by $80. As the earnings rate for the calendar year in which contract year 3 begins is 7.5%, the contract's overage earnings for contract year 3 equal $6 ($80 × 7.5%).

For contract year 4, the overage is $290 ($42,250 – $41,960). The cumulative overage earnings for all prior contract years equal $6.00. The earnings rate is 8.3%. The overage earnings for contract year 4 equal $24.57 (($290 + $6) × 8.3%).

For contract year 5, the overage is $1,300 ($53,750 – $52,450). The cumulative overage earnings for all prior contract years equal $30.57 ($6 + $24.57). The earnings rate is 7.8%. The overage earnings for contract year 5 equal $103.78 (($1,300 + $30.57) × 7.8%).

For contract year 6, the overage is $1,810 ($64,750 – $62,940). The cumulative overage earnings for all prior contract years equal $134.35 ($6 + $24.57 + $103.78). The earnings rate is 7.7%. The overage earnings for contract year 6 equal $149.71 ($1,810 + $134.35) × 7.7%).

For contract year 7, the overage is $1,320 ($74,750 – $73,430). The cumulative overage earnings for all prior contract years equal $284.06 ($6 + $24.57 + $103.78 + $149.71). The earnings rate is 7.5%. The overage earnings for contract year 7 equal $120.30 (($1,320 + $284.06) × 7.5%).

The cumulative overage earnings for the contract equal $404.36 ($6 + $24.57 + $103.78 + $149.71 + $120.30). Under sections 3.10 and 3.11 of this revenue procedure, the distribution frequency factor is .5 and the applicable percentage is 36%. Accordingly, the amount required to be paid with regard to the contract under section 5.04 of this revenue procedure is $72.78 ($404.36 × .5 × 36%).

(b) *Example 2.* The facts are the same as in example 1 except that, at the beginning of contract year 5, A receives $3,000 as a policy loan. The contract's cash value (within the meaning of§ 72(e)-(3)(A)(i)) immediately prior to the loan is $58,500, which exceeds A's investment in the contract ($53,750) by $4,750. Each year A pays the interest on the policy loan. The issuer does not file a timely information return with regard to the deemed distribution resulting from the policy loan and A does not include the distribution in gross income reported on the income tax return for the taxable years in which the deemed distribution is received. The total income on the contract (as defined in section 3.09 of this revenue procedure) is $14,500.

The amount required to be paid with regard to the contract under section 5.04 of this revenue procedure is the sum of–

(1) an amount equal to the income tax (determined using a 36% tax rate) and the additional tax under section 72(v) with regard to the $3,000 deemed distribution in contract year 5;

(2) interest computed under section 6621(a)(2) as if the amounts determined under (1) were underpayments for the taxable year in which the distributions are deemed to have occurred; and

(3) 36% of $160.35, which is the excess of the contract's cumulative overage earnings over the proportionate share of

the overage earnings allocable to taxable distributions ($404.36 – $83.66), multiplied by the distribution frequency factor (.5).

The proportionate share of overage earnings allocable to taxable distributions is obtained by multiplying the total amount of the taxable distribution under the contract ($3,000), by a fraction, the numerator of which is the contract's cumulative overage earnings ($404.36) and the denominator of which is the total income on the contract ($14,500).

.05 *Payment of amount.* The issuer is required to pay the amount determined under section 5.04 of this revenue procedure within thirty (30) days of the date of execution of the closing agreement by the Service. Payment shall be made by check payable to the "United States Treasury" delivered, together with a fully executed copy of the closing agreement, to Internal Revenue Service, Philadelphia Service Center, 11601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19154, Attention: Chief, Receipt and Control Branch, DP319.

.06 *Correction of contracts.* The issuer also must bring each contract into compliance with § 7702A, either by an increase in death benefit[s] or the return of excess premiums and earnings thereon, within ninety (90) days of the date of execution of the closing agreement by the Service.

SECTION 6. MODEL CLOSING AGREEMENT

Effective as of the date executed by Internal Revenue Service _____

CLOSING AGREEMENT AS TO FINAL DETERMINATION COVERING SPECIFIC MATTERS

THIS CLOSING AGREEMENT ("Agreement"), made pursuant to section 7121 of the Internal Revenue Code (the "Code") by and between [taxpayer's name, address, and identifying number] ("Taxpayer"), and the Commissioner of Internal Revenue (the "Service").

WHEREAS,

A. Taxpayer is the issuer of one or more modified endowment contracts, as defined in section 7702A of the Code;

B. On_____, Taxpayer pursuant to Rev. Proc. 99–27, 1999-23 I.R.B., submitted to the Service a request for a ruling that one or more modified endowment contracts (the "Contract[s]"), which are identified on Exhibit A to this Agreement, be treated as contracts that are not modified endowment contracts.

C. Taxpayer represents that the Contract[s] is [are] not described in section 4.02 or 4.03 of Rev. Proc. 99–27.

D. Taxpayer represents that the cumulative "overage earnings," within the meaning of section 3.06 of Rev. Proc. 99–27, for the Contract[s] equal $_____.

E. Taxpayer represents that the total of the amounts determined under section 5.04(1)(a), (b), and (c) of Rev. Proc. 99–27, after taking the special rule in section 5.04(2) of the revenue procedure into account, with regard to the Contract[s] are $_____, $_____, and $_____, respectively.

F. To ensure that the Contracts are not treated as modified endowment contracts, Taxpayer and the Service have entered into this Agreement.

NOW THEREFORE, IT IS HEREBY FURTHER DETERMINED AND AGREED BETWEEN TAXPAYER AND THE SERVICE AS FOLLOWS:

1. In consideration for the agreement of the Service as set forth in Section 2 below, Taxpayer agrees as follows:

(A) To pay to the Service the sum of _____ dollars and _____ cents ($_____) at the time and in the manner described in Section 3 below;

(B) The amount paid pursuant to Section 1(A) above is not deductible by Taxpayer, nor is such amount refundable, subject to credit or offset, or otherwise recoverable by Taxpayer from the Service;

(C) For purposes of its information reporting and withholding obligations under the Code, no holder's investment in any Contract may be increased by any portion of—

(i) the sum set forth in Section 1(A) above, or

(ii) the excess of the cumulative overage earnings over the proportionate share of overage earnings included in gross income reported to the Service on a timely filed information return or income tax return with regard to amounts received under any Contract; and

(D) To bring the Contract[s] into compliance with § 7702A, either by an increase in death benefit[s] or the return of excess premiums and earnings thereon.

2. In consideration of the agreement of Taxpayer set forth in Section 1 above, the Service and Taxpayer agree as follows:

(A) To treat each Contract as having satisfied the requirements of section 7702A during the period from the date of issuance of the Contract through and including the later of—

(i) date of the execution of this Agreement, and

(ii) the date of the corrective actions described in Section 1(D) above;

(B) To treat the corrective action described in 1(D) above as having no effect on the date the Contract was issued or entered into;

(C) To waive civil penalties for failure of Taxpayer to satisfy the reporting, withholding, and/or deposit requirements for income subject to tax under § 72(e)-(10) that was received or deemed received by a contract holder under a Contract in a calendar year ending prior to the date of execution of this Agreement; and

(D) To treat no portion of the sum described in Section 1(A) above as income to the holders of the Contracts.

3. The actions required of Taxpayer in Section 1(D) above shall be taken by Taxpayer within ninety (90) days of the date of execution of this Agreement by the Service. Payment of the amount described in Section 1(A) above shall be made within thirty (30) days of the date of execution of this Agreement by the Service by check payable to the "United States Treasury," delivered together with a fully executed copy of this Agreement, to Internal Revenue Service, Philadelphia Service Center, 11601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19154, Attention: Chief, Receipt and Control Branch, DP319.

4. This Agreement is, and shall be construed as being, for the benefit of Taxpayer. The holder[s] of Contract[s] covered by this Agreement are intended beneficiaries of this Agreement. This Agreement shall not be construed as creating any liability of an issuer to the holders of the Contract[s].

5. Neither the Service nor Taxpayer shall endeavor by litigation or other means to attack the validity of this Agreement.

6. This Agreement may not be cited or relied upon as precedent in the disposition of any other matter.

NOW THIS CLOSING AGREEMENT FURTHER WITNESSETH, that Taxpayer and the Service mutually agree that the matters so determined shall be final and conclusive, except as follows:

1. The matter to which this Agreement relates may be reopened in the event of fraud, malfeasance, or misrepresentation of material facts set forth herein.

2. This Agreement is subject to sections of the Code that expressly provide that effect be given to their provisions notwithstanding any other law or rule of law except § 7122 of the Code.

3. This Agreement is subject to any legislation enacted subsequent to the date of execution hereof if the legislation provides that it is effective with respect to closing agreements.

IN WITNESS WHEREOF, the parties have subscribed their names in triplicate.

Taxpayer

Date Signed: _____ By: _____

Title/Office

Commissioner of Internal Revenue

By: _____

_____

Title/Office

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective May 18,1999, the date this revenue procedure was made available to the public.

SECTION 8. EXPIRATION DATE

This revenue procedure is available only for requests for relief that are received on or before May 31, 2001.

SECTION 9. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1625.

The collection of information and reporting burden are in section 5 of this revenue procedure. This information will be used to determine whether an issuer may remedy failures to comply with the requirements of § 7702A. The likely respondents are insurance companies.

The estimated total annual reporting burden is 20,000 hours.

The estimated annual burden per respondent varies from 50 hour to 150 hours with an average of 100 hours. The estimated number of respondents is 200.

The estimated annual frequency of the responses is one time.

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

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

DRAFTING INFORMATION

The principal author of this revenue procedure is Katherine Hossofsky of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure, contact Ms. Hossofsky on (202) 622-3477 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Reporting of Gross Proceeds Payments to Attorneys

REG–105312–98

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the reporting of payments of gross proceeds to attorneys. The regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The regulations will affect attorneys who receive payments of gross proceeds on behalf of their clients, and certain payors (defendants in lawsuits and their insurance companies and agents) that in the course of their trades or businesses make payments to these attorneys. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by August 19, 1999. Outlines of topics to be discussed at the public hearing scheduled for September 22, 1999, at 10 a.m., must be received by September 1, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–105312–98), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–105312–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in the IRS Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, A. Katharine Jacob Kiss at (202) 622-4920; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Michael Slaughter at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget,** Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service,** Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by July 20, 1999. Comments are specifically requested concerning:

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

The accuracy of the estimated burden associated with the proposed collection of information (see below);

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

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

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

The collection of information in this proposed regulation is in §1.6045–5(a). This information is required by the IRS to implement section 1021 of the Taxpayer Relief Act of 1997. This information will be used to verify compliance with section 6045 and to determine that the taxable amount of these payments has been computed correctly. The collection of information is mandatory. The likely respondents are businesses and other for profit institutions.

Respondent taxpayers (payors) provide the information by completing one Form 1099-MISC, Miscellaneous Income, for each attorney who has received one or more payments of gross proceeds from the payor during the calendar year. The burden for this requirement is reflected in the burden estimate for Form 1099-MISC. The estimated burden of information collection for the 1999 Form 1099-MISC is 14 minutes per return.

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

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

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 6045 of the Internal Revenue Code. A new reporting requirement, section 6045(f), was added to the Code by section 1021 of the Taxpayer Relief Act of 1997 (1997 Act) (Public Law 105–34, 111 Stat. 922). Section 6045(f) provides for information reporting for payments of gross proceeds made in the course of a trade or business to attorneys in connection with legal services (whether or not the services are performed for the payor). No information return is required under section 6045(f) for the portion of any payment that is required to be reported under section 6041(a) (or that would be required except for the $600 limitation) or under section 6051 (employee compensation). The 1997 Act also provides that the general

exception for reporting to corporations in §1.6041–3(c) does not apply to corporations providing legal services.

Explanation of Provisions

The proposed regulations take into account comments made by, among others, insurance companies and other payors, the American Bar Association, and the members of the Commissioner's Information Reporting Program Advisory Committee (IRPAC). The operation of section 6045(f) was the subject of a paper presented at the IRPAC meeting held in Washington, DC., on October 28 and 29, 1997, and comments were also received at that meeting.

The proposed regulations clarify that there is no threshold amount below which reporting under section 6045(f) is not required. Additionally, payments made to corporations engaged in providing legal services are reportable.

Several commentators asked whether reporting under section 6045(f) relieves the payor of all other reporting obligations by shifting the reporting obligations to the attorney. The proposed regulations do not adopt this approach. Section 6045 imposes an additional reporting requirement on payors and does not relieve them of any other pre-existing or concurrently existing reporting requirement. The exception in section 6045(f)(2)(B) is limited to situations in which the amount of the attorney fee is already reportable to the attorney as income or wages. The legislative history clearly supports this determination. See, H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 546 (1997) and Joint Committee on Taxation Staff, *General Explanation of Tax Legislation Enacted in 1997,* 105th Cong., 1st Sess. 214-15 (1997).

Several commentators stated that in certain situations, a gross proceeds payment is delivered to the attorney, but the attorney is not listed as a payee on the check. In some instances this results from the operation of local law; in other instances, attorneys request that their names not appear on the check. The proposed regulations provide that when a payment is delivered to an attorney, even if that attorney is not listed as a payee, the payor is required to file an information return under section 6045(f).

Wherever possible, however, the proposed regulations provide exceptions to the reporting requirement. For example, the proposed regulations provide for a rule of administrative convenience if multiple attorneys are listed as payees. Generally, in those situations, the payor is only required to report on the attorney who receives the payment. The IRS and Treasury Department continue to welcome comments on whether additional exceptions to the reporting requirement are appropriate.

Many commentators suggested that Form 1099-B is not the best form for reporting under section 6045(f). The proposed regulations provide that the information return is made on Form 1099-MISC.

Several commentators asked the IRS to define legal services. Some commentators requested a narrow definition that would exclude any services that did not require that the provider be an attorney, e.g., property or financial management services. However, those commentators also stated that the attorney would most likely be collecting a fee for rendering those services. The IRS and Treasury Department have proposed a broad definition of legal services that includes any services performed by or under the supervision of an attorney.

One commentator asked whether the attorney's TIN must be certified. The proposed regulations provide that, consistent with the general rule under sections 6045 and 6041, the attorney's TIN need not be certified.

The proposed regulations clarify that payments of gross proceeds are subject to backup withholding if the attorney does not provide a TIN. This is consistent with the legislative history that provides:

> Third, attorneys are required to promptly supply their TINS to persons required to file these information reports, pursuant to section 6109. Failure to do so could result in the attorney being subject to penalty under section 6723 and the payments being subject to backup withholding under section 3406.

H.R. Conf. Rep. No. 220, at 546 (1997).

Finally, all of the examples in the proposed regulations follow the generally well-established principle of tax law that the income portion of a plaintiff's settlement is not reportable net of the attorneys fees. But, *cf.,* Rev. Rul. 80–364, 1980–2 C.B. 294 (Situation 3 holding that the attorney's fees portion of the settlement is a reimbursement for expenses incurred by the union to enforce the collective bargaining agreement and not includible in the gross income of the individual employees), and *Davis v. Commissioner,* T.C.M. 1998–248 (following *Cotnam v. Commissioner,* 263 F.2d 119 (5th Cir. 1959) for determinations under Alabama law).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It 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.

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the facts that: (1) the time required to prepare and file a Form 1099-MISC is minimal (currently estimated at 14 minutes per form); and (2) it is not anticipated that, as a result of these regulations, small entities will have to prepare and file more than a few, at most, forms per year. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 22, 1999, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 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 preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and 8 copies) by September 1, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is A. Katharine Jacob Kiss, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6041–3, effective on January 1, 2000, is amended by revising the first sentence of paragraph (q)(1) to read as follows:

§1.6041–3 Payments for which no return of information is required under section 6041.

* * * * *

(q) * * *

(1) A corporation described in §1.6049–4(c)(1)(ii)(A), except a corporation engaged in providing legal services, and except a corporation engaged in providing medical and health care services or engaged in the billing and collecting of payments in respect to the providing of medical and health care services. * * *

* * * * *

Par. 3. Section 1.6041–3, currently in effect as of May 21, 1999, is amended by revising the introductory text of paragraph (c) to read as follows:

§1.6041–3 Payments for which no return of information is required under section 6041.

* * * * *

(c) Payments to a corporation, except payments made after December 31, 1997, to a corporation engaged in providing legal services, and except payments made after December 31, 1970, to a corporation engaged in providing medical and health care services or engaged in the billing and collecting of payments in respect to the providing of medical and health care services, other than payments to—

* * * * *

Par. 4. Section 1.6045–5 is added to read as follows:

§1.6045–5 Information reporting on payments to attorneys.

(a) *Requirement of reporting*—(1) *In general.* A person engaged in a trade or business that makes a payment in the course of that trade or business to an attorney in connection with legal services (whether or not the services were performed for the payor) must, except as provided in paragraph (c) of this section, file an information return on Form 1099-MISC, "Miscellaneous Income", with the Internal Revenue Service for the calendar year in which the payment is made. For the time and place of filing Form 1099-MISC, see §1.6041–6. The requirements of this paragraph (a)(1) apply whether or not—

(i) Payments to the attorney aggregate less than $600 for the calendar year;

(ii) A portion of a payment is kept by the attorney as compensation for legal services rendered; or

(iii) Other information returns are required with respect to some or all of a payment under other applicable provisions of the Internal Revenue Code and the regulations thereunder.

(2) *Information required.* The information return required under paragraph (a)(1) of this section must include the following information:

(i) The name, address, and taxpayer identification number (TIN) (as defined in section 7701(a)) of the person making the payment.

(ii) The name, address, and TIN of the attorney to whom the payment was made.

(iii) The aggregate amount of payments for the calendar year.

(iv) Any other information required by Form 1099-MISC and its instructions.

(3) *Requirement to furnish statement.* A person required to file an information return under paragraph (a)(1) of this section must furnish to the attorney a written statement of the information required to be shown on the return. This requirement may be met by furnishing a copy of the return to the attorney. The written statement must be furnished to the attorney on or before January 31 of the year following the year in which the payment was made.

(b) *Special rules*—(1) *Check delivered to non-payee attorney.* If a check is delivered to an attorney who is not a payee, an information return must be filed under paragraph (a)(1) of this section with respect to the attorney if, under the circumstances, it is reasonable for the payor to believe that the attorney is receiving the check in connection with legal services.

(2) *Joint or multiple payees*—(i) *Check delivered to attorney.* If more than one attorney is listed as a payee on a check, an information return must be filed under paragraph (a)(1) of this section with respect to the attorney who received the check.

(ii) *Check delivered to non-attorney.* If a check has attorney and non-attorney payees and the check is delivered to a non-attorney, an information return must be filed under paragraph (a)(1) of this section with respect to the first listed attorney.

(3) *Attorney required to report payments made to the other attorneys.* An attorney with respect to whom an information return is filed under paragraph (b)(1) or (2) of this section must file information returns, as required under this section, for payments the attorney makes to any other attorneys.

(c) *Exceptions.* A return of information is not required under paragraph (a)(1) of this section with respect to the following payments:

(1) Payments of wages or other compensation paid to an attorney by the attorney's employer.

(2) Payments of compensation or profits paid or distributed to its individual partner by a partnership engaged in providing legal services.

(3) Payments of dividends or corporate earnings and profits paid to its shareholder by a corporation engaged in providing legal services.

(4) Payments of income to an attorney of a fixed or determinable amount required to be reported (or payments that would be required to be reported were it not for failing to meet the dollar amount limitation contained in section 6041(a)) pursuant to section 6041(a) and §1.6041–1(a).

(5) Payments of the balance of the gross proceeds made to an attorney if a payment described in paragraph (c)(4) of this section is made.

(6) Payments made to a foreign attorney, if the foreign attorney can clearly demonstrate that the attorney is not subject to U.S. tax.

(d) *Definitions.* The following definitions apply for purposes of this section:

(1) *Attorney* means a person engaged in the practice of law, whether as a sole proprietor, partnership, corporation, or joint venture.

(2) *Legal services* means all services performed by, or under the supervision of, an attorney.

(e) *Attorney to furnish TIN.* A payor that is required to make an information return under this section must solicit a TIN from the attorney at or before the time the payor pays gross proceeds to the attorney. Any attorney whose TIN is solicited must furnish the TIN to the payor, but is not required to certify that the TIN is correct. Except as otherwise provided under section 3406, if the attorney does not furnish the attorney's TIN, the payment is subject to backup withholding.

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

Example 1. A, a plaintiff in a suit for lost wages against T, is represented by attorney B. A settles her suit for $300,000. Payment is made by a check payable jointly to A and B. T does not know the amount of the attorney fee. B retains $100,000 and disburses the remaining $200,000 net proceeds to A.

T must file a Form W-2 for $300,000 with respect to A under section 6051. T must also file a Form 1099-MISC with respect to B for $300,000 (see paragraph (a)(1)(iii) of this section).

Example 2. The facts are the same as in *Example 1,* except that T knows that the attorney fee is one-third of the settlement amount, or $100,000. T must file a Form W-2 for $300,000 with respect to A under section 6051. T must also file a Form 1099-MISC with respect to B for $100,000 under section 6041. T is not required to file an information return with respect to B for $200,000 (the balance of the gross proceeds) because of the exception provided in paragraph (c)(5) of this section.

Example 3. C, a plaintiff in a suit for physical personal injury against V, is represented by attorney D. C settles his suit for damages that are excludable from C's gross income under section 104(a)(2). The settlement check is payable jointly to C and D. V does not know the amount of the attorney fee. V must file a return of information with respect to D under paragraph (a)(1) of this section. V is not required to file a return of information with respect to C under section 6041 because the settlement amount is excludable from C's income under section 104(a)(2).

Example 4. W, a defendant in a suit for wrongful injury, knows that D, the plaintiff, has been represented by attorney E throughout the proceeding. State O, where the suit is brought, mandates that certain benefits and settlement awards be made payable to the claimant only. W makes a check payable solely to D and delivers the payment to E's office. W has made a payment to an attorney (see paragraph (b)(1) of this section) and must file a return of information under paragraph (a) of this section.

Example 5. X, a defendant in a suit for lost wages, reasonably believes that F, the plaintiff, has been represented by attorney G throughout the proceeding as evidenced by filings and correspondence signed by G. X makes a check for damages payable solely to F and delivers it to G's office. X has made a payment to an attorney (see paragraph (b)(1) of this section) and must file a return of information under paragraph (a) of this section.

Example 6. Y, a defendant in a suit, makes a payment of the gross proceeds of the amount awarded under the suit to the plaintiff's attorneys, H, I, and J. H, I, and J are not related parties. The payment is delivered to J's office. J deposits the monies into her trust account and pays H and I their respective shares. Y must file a return of information with respect to J (see paragraph (b)(2)(i) of this section). J must file a return of information with respect to H and I (see paragraph (b)(3) of this section).

(g) *Cross reference to penalties.* See the following sections regarding penalties for failure to comply with the requirements of section 6045(f) and this section:

(1) Section 6721 for failure to file a correct information return.

(2) Section 6722 for failure to furnish a correct payee statement.

(3) Section 6723 for failure to comply with other information reporting requirements (including the requirement to furnish a TIN).

(4) Section 7203 for willful failure to supply information (including a taxpayer identification number).

(h) *Effective date.* The rules in this section apply to payments made after December 31, 1999.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on May 20, 1999, 8:45 a.m., and published in the issue of the Federal Register for May 21, 1999, 64 F.R. 27730)

Notice of Proposed Rulemaking and Notice of Public Hearing

Special Rules Regarding the Simplified Production and Resale Methods With Historic Absorption Ratio Election

REG–113910–98

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 263A that relate to accounting for costs incurred in producing property and acquiring property for resale. The proposed regulations are necessary to address specific problems in the current section 263A regulations and affect persons who elect to use the simplified production or resale meth-

ods with historic absorption ratio election. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by August 23, 1999. Outlines of topics to be discussed at the public hearing scheduled for September 1, 1999, at 10 a.m., must be received by August 11, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–113910–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–113910–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jennifer Nuding, (202)622-4970; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke at (202) 622-7180 (not toll-free calls).

SUPPLEMENTARY INFORMATION:

Background

Section 263A provides uniform rules for capitalization of certain expenses. Section 263A requires the capitalization of the direct, and an allocable portion of the indirect, costs of real or tangible personal property produced by a taxpayer or real and personal property described in section 1221(1) that is acquired by the taxpayer for resale. The rules under section 263A, which were added by the Tax Reform Act of 1986, Public Law 99-514, section 803, 100 Stat. 2085, 2350, were designed, in part, to properly match income with related expenses and, thus, more accurately reflect income. They also were intended to make the tax system more neutral by eliminating the differences in capitalization rules that created distortions in the allocation of economic resources and the manner in which certain economic activity was organized. See S. Rep. No. 313, 99th Cong., 2d Sess. 140 (1986), 1986–3 C.B. Vol. 3 140. However, the legislative history provides authority to the Secretary to prescribe simplifying methods and assumptions where the costs and other burdens of literal compliance with section 263A may outweigh the benefits of the provision (e.g., matching and neutrality). S. Rep. No. 313, 99th Cong., 2d Sess. 142 (1986).

Section 263A costs are the costs that a taxpayer must capitalize under section 263A and equal the sum of a taxpayer's section 471 costs, its additional section 263A costs, and interest capitalizable under section 263A(f). Additional section 263A costs are the costs, other than interest, that were not capitalized under the taxpayer's method of accounting immediately prior to the effective date of section 263A, but that are required to be capitalized under section 263A.

Sections 1.263A–1 through 1.263A–3 of the final regulations (T.D. 8482, 1993–2 C.B. 77) were published in the **Federal Register** for August 9, 1993 (58 F.R. 42207) and amended by T.D. 8559 (59 F.R. 39958), T.D. 8584 (59 F.R. 67187), T.D. 8597 (60 F.R. 36671), T.D. 8728 (62 F.R. 42051) and T.D. 8729 (62 F.R. 44542). The final regulations provide simplified methods for determining the additional section 263A costs properly allocable to eligible property on hand at the end of the taxable year, including ending inventories of property produced and property acquired for resale. The final regulations include the simplified production method contained in the temporary regulations issued under 263A, §1.263A–1T(b)(5), T.D. 8131 (58 F.R. 151), and the simplified resale method, a redesignation of the modified resale method set forth in Notice 89-67, 1989–1 C.B. 723. A taxpayer using either the simplified production method or the simplified resale method determines the additional section 263A costs properly allocable to eligible property on hand at the end of the taxable year by multiplying its absorption ratio by the section 471 costs on hand at year-end. Under both the simplified production method and the simplified resale method, an absorption ratio is calculated annually and applied to determine the additional section 263A costs allocated to ending inventory.

In response to requests for additional simplification, the final regulations provide an election to use an historic absorption ratio to determine additional section 263A costs allocable to eligible property on hand at year-end that may be used in connection with either the simplified production method or the simplified resale method.

The final regulations permit a taxpayer that properly elects to use the historic absorption ratio to determine the additional section 263A costs allocable to eligible property on hand at the end of the taxable year by using an historic absorption ratio in lieu of an actual absorption ratio, i.e., by multiplying the historic absorption ratio by section 471 costs on hand at year-end. The historic absorption ratio is based on costs capitalized by a taxpayer during its test period, generally the three taxable-year period immediately prior to the taxable year that the taxpayer elects the historic absorption ratio. The historic absorption ratio equals the taxpayer's additional section 263A costs incurred during the test period divided by the section 471 costs incurred by the taxpayer during the test period. Under the final regulations, taxpayers are required to test the accuracy of the historic absorption ratio every six years. If the test of the ratio indicates more than one-half of one percentage point difference (plus or minus) from the historic absorption ratio, the taxpayer must redetermine its historic absorption ratio using a new updated test period. The final regulations provide that, if elected, the historic absorption ratio must be used for each taxable year within the qualifying period. Generally, the qualifying period includes each of the first five taxable years beginning with the first taxable year after a test period (or an updated test period).

Explanation of Provisions

This document contains proposed amendments to the Income Tax Regula-

tions (26 CFR part 1) that relate to the capitalization of certain costs under section 263A. More specifically, this document contains proposed amendments with respect to the historic absorption ratio election that are necessary to carry out the purpose of section 263A. The rules under section 263A were designed to properly match income with related expenses by requiring all of the costs relating to an item produced or acquired for resale to be included in the basis or inventoriable cost of that item. The simplified production method and the simplified resale method were included in the regulations to provide taxpayers with a simplified method for determining the additional section 263A costs allocable to items on hand at year end. The historic absorption ratio election was provided in response to commentators' concerns that computations under the simplified production method and the simplified resale method are costly and time consuming because taxpayers must determine absorption ratios annually, even though there may have been little or no change in the taxpayers' business operations that would cause the absorption ratios to vary from year to year.

The historic absorption ratio election in the final regulations is intended to permit taxpayers to determine additional section 263A costs allocable to items on hand at year-end without calculating actual absorption ratios while still capitalizing the costs properly allocable to property produced or acquired for resale. The historic absorption ratio was selected in lieu of an industry-based ratio because the IRS and Treasury Department believed that a ratio based on taxpayer specific historical data would more reasonably approximate the taxpayer's annual absorption ratio than an industry-based ratio.

The IRS and Treasury Department have become aware that the historic absorption ratio may become materially inaccurate generally as the result of a significant change in a taxpayer's circumstances during the qualifying period, thus resulting in a failure to allocate the proper amount of additional section 263A costs to items on hand at year-end. Although the regulations provide that a taxpayer must test its historic absorption ratio every six years, a significant deviation from the taxpayer's actual absorption ratio could result in a substantial mismatching of the taxpayer's income and related expenses during the qualifying period.

The IRS and Treasury Department considered many alternate approaches to revising the historic absorption ratio regulations in order to prevent a substantial mismatching of income and related expenses. Among the approaches considered and rejected were the following: (1) eliminate the historic absorption ratio election entirely; (2) limit use of the historic absorption ratio election to small taxpayers; (3) require taxpayers to retest their historic absorption ratio more frequently, e.g., every three years; and (4) provide a general anti-abuse rule.

These proposed regulations provide for early termination of the qualifying period if the taxpayer's historic absorption ratio is materially inaccurate. In such a case, the taxpayer must calculate a new historic absorption ratio beginning with the year in which the taxpayer's historic absorption ratio became materially inaccurate.

Generally, a taxpayer's historic absorption ratio may become materially inaccurate when the taxpayer experiences a significant change in the taxpayer's normal business operations and that change has an effect on the taxpayer's section 263A absorption ratio. For example, the following changes may cause a taxpayer's historic absorption ratio to become materially inaccurate: a significant change in the taxpayer's manufacturing process, e.g. implementation of a new inventory management system; a significant change in the taxpayer's product offering; a significant addition or retirement of equipment used for manufacturing; a significant change in the taxpayer's components of cost, e.g., a manufacturing operation that becomes significantly more or less labor intensive; a significant change in the taxpayer's overhead costs, e.g. a new plant, building or building addition; and a significant change in the taxpayer's trade or business, e.g., the sale or acquisition of a division.

The proposed regulations establish a high threshold for when the historic absorption ratio will be regarded as materially inaccurate. The regulations provide a definition of materially inaccurate that incorporates both a percentage test and a specific dollar amount test. The regulations provide that the historic absorption ratio is materially inaccurate if: (1) the taxpayer's actual absorption ratio deviates by more than 50% and by more than one-half of one percentage point from the taxpayer's historic absorption ratio; and (2) the amount of additional section 263A costs capitalizable to items on hand at year-end using the actual absorption ratio deviates by more than $100,000 from the amount of additional section 263A costs capitalizable to items on hand at year-end using the historic absorption ratio. This high threshold is provided so that annual actual absorption ratio computations will be unnecessary in the overwhelming majority of situations. For example, the placement in service of a significant amount of property may have a significant effect on a taxpayer's actual absorption ratio. However, it may not be necessary for a taxpayer to compute its actual absorption ratio for a year that the taxpayer placed property in service if, based on the taxpayer's knowledge of the difference between its tax depreciation and book depreciation, and its inventory turnover, the taxpayer knows that it would be impossible for the amount of additional section 263A costs allocable to items on hand at year-end to increase by $100,000 if the taxpayer used the simplified production method without the historic absorption ratio election. Therefore, the taxpayer would not need to calculate an actual absorption ratio for that year.

Proposed Effective Date

The provisions of these regulations are proposed to be effective for taxable years beginning after May 24, 1999.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 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 the regulations do 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 Internal

Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, September 1, 1999, in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 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 preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written or electronic comments by August 23, 1999 and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by August 11, 1999.

A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Jennifer Nuding of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

Part 1—INCOME TAXES

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

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

Par. 2. Section 1.263A–2 is amended as follows:

1. Paragraphs (b)(4)(ii)(C)(*1*) and (*2*) are revised;

2. New paragraphs (b)(4)(ii)(C)(*3*) and (*4*) are added;

3. Paragraph (b)(4)(vi) is amended by:

a. Revising the paragraph heading and introductory text;

b. Redesignating the *Example* as *Example 1*;

c. Adding new *Example 2* and *Example 3.*

The revisions and additions read as follows:

§1.263A–2 Rules relating to property produced by the taxpayer.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(C) *Qualifying period*—(*1*) *In general.* A qualifying period generally includes each of the first five taxable years beginning with the first taxable year after a test period (or an updated test period). However, a qualifying period may be extended under the provisions of paragraph (b)(4)(ii)(C)(*2*) of this section or may terminate early under the provisions of paragraph (b)(4)(ii)(C)(*3*) of this section.

(*2*) *Extension of qualifying period.* In the first taxable year following the close of each qualifying period, (e.g., the sixth taxable year following the test period), the taxpayer must compute the actual absorption ratio under the simplified production method. If the actual absorption ratio computed for this taxable year (the recomputation year) is within one-half of one percentage point (plus or minus) of the historic absorption ratio used in determining capitalizable costs for the qualifying period (e.g., the previous five taxable years), the qualifying period is extended to include the recomputation year and the following five taxable years (or a shorter period if the qualifying period is terminated early under the provisions of paragraph (b)(4)(ii)(C)(*3*) of this section), and the taxpayer must continue to use the historic absorption ratio throughout the extended qualifying period. If, however, the actual absorption ratio computed for the recomputation year is not within one-half of one percentage point (plus or minus) of the historic absorption ratio, the taxpayer must use actual absorption ratios beginning with the recomputation year under the simplified production method and throughout the updated test period. The taxpayer must resume using the historic absorption ratio (determined with reference to the updated test period) in the third taxable year following the recomputation year.

(3) *Earlier termination of the qualifying period.* For taxable years beginning afterMay 24, 1999, a qualifying period closes immediately prior to a taxable year in which the taxpayer's historic absorption ratio becomes materially inaccurate (early recomputation year). If the taxpayer's historic absorption ratio is materially inaccurate, as defined in paragraph (b)(4)(ii)(C)(4) of this section, the taxpayer must use its actual absorption ratios computed using the simplified production method beginning with the early recomputation year and throughout the updated test period. The taxpayer must resume using the historic absorption ratio (determined with reference to the updated test period) in the third taxable year following the early recomputation year.

(4) *Materially inaccurate.* For purposes of this paragraph (b)(4), an historic absorption ratio becomes materially inaccurate in a taxable year that—

(*i*) The taxpayer's actual absorption ratio computed using the simplified production method deviates by more than 50 percent and by more than one-half of one percentage point from the taxpayer's historic absorption ratio for that year; and

(*ii*) The amount of additional section 263A costs capitalizable to eligible property remaining on hand at the close of that year under the simplified production

method (using the taxpayer's actual absorption ratio) deviates by more than $100,000 from the amount of additional section 263A costs capitalizable to that property under the simplified production method with historic absorption ratio election for that year.

* * * * *

(vi) *Examples.* The provisions of this paragraph (b)(4) are illustrated by the following examples:

Example 1. * * *

Example 2. (i) Taxpayer K uses the FIFO method of accounting for inventories and properly elects to use the historic absorption ratio with the simplified production method for 1998. K identifies the following costs incurred during the test period:

1995:
Add'l section 263A costs — $3,500,000 Section 471 costs — $75,000,000
1996:
Add'l section 263A costs — $4,000,000 Section 471 costs — $80,000,000
1997:
Add'l section 263A costs — $4,500,000 Section 471 costs — $85,000,000

(ii) Therefore, K computes a 5% historic absorption ratio as follows:

$$\text{Historic absorption ratio} = \frac{\$3{,}500{,}000 + 4{,}000{,}000 + 4{,}500{,}000}{\$75{,}000{,}000 + 80{,}000{,}000 + 85{,}000{,}000} = 5\%$$

(iii) In 1998, K incurs $90,000,000 of section 471 costs of which $15,000,000 remain in inventory at the end of the year. In addition, K places $50,000,000 of plant and equipment into service. K's book depreciation on the new plant and equipment is $5,000,000, while K's tax depreciation on the new plant and equipment is $10,000,000. K's book depreciation is a section 471 cost as described in §1.263A–1(d)(2) and the excess of K's tax depreciation over K's book depreciation, $5,000,000, is an additional section 263A cost. K also has $4,500,000 in other additional section 263A costs.

(iv) K must determine whether K's historic absorption ratio is materially inaccurate in 1998. Under the simplified production method without the historic absorption ratio election, K determines its actual absorption ratio for 1998 as follows:

$$\text{Actual absorption Ratio} = \frac{\$4{,}500{,}000 + \$5{,}000{,}000}{\$90{,}000{,}000 + \$5{,}000{,}000} = 10\%$$

(v) The difference between K's actual absorption ratio (10%) under the simplified production method for 1998 and K's historic absorption ratio (5%) is 5%, which is greater than 50 percent of K's historic absorption ratio for that year (5% x 50% = 2.5%). Under the simplified production method without the historic absorption ratio election, K determines the additional section 263A costs allocable to its ending inventory by multiplying its actual absorption ratio (10%) by the section 471 costs remaining in its ending inventory as follows:

Add'l section 263A costs = 10% × $15,000,000 = $1,500,000

(vi) Under the simplified production method using the historic absorption ratio, K determines the additional section 263A costs allocable to its ending inventory by multiplying its historic absorption ratio (5%) by the section 471 costs remaining in its ending inventory as follows:

Add'l section 263A costs = 5% × $15,000,000 = $750,000

(vii) The difference between the amount of additional section 263A costs allocable to eligible property remaining on hand at the close of 1998 under the simplified production method using the taxpayer's actual absorption ratio and the amount of additional section 263A costs allocable to that property under the simplified production method with historic absorption ratio election ($1,500,000 – $750,000 = $750,000) exceeds $100,000. Accordingly, K's historic absorption ratio is materially inaccurate for 1998.

(viii) Since K's historic absorption ratio is materially inaccurate in 1998, K's qualifying period closes immediately prior to the beginning of K's 1998 taxable year. Therefore, K must update its test period beginning in 1998. K must use actual absorption ratios under the simplified production method beginning in 1998 and throughout the updated test period (1999 and 2000). K must resume using the historic absorption ratio (determined with reference to the updated test period) in 2001, the third taxable year following 1998.

Example 3. (i) Taxpayer L properly elects to use the historic absorption ratio with the simplified production method for 1999. L computes a 10% historic absorption ratio. On average, L's inventory turns over approximately fifteen times a year.

(ii) In 1999, L incurs $8,000,000 of section 471 costs of which $500,000 remain in inventory at the end of the year. In addition, L places $5,000,000 of plant and equipment into service. The difference between L's tax depreciation on the new plant and equipment and L's book depreciation on that plant and equipment for 1999 is $500,000, which is an additional section 263A cost. There were no other changes in L's additional 263A costs.

(iii) L can determine, without calculating an actual absorption ratio, that its historic absorption ratio is not materially inaccurate for 1999. The difference between the amount of additional section 263A costs allocated to its ending inventory using its actual absorption ratio and the amount of additional section 263A costs allocated to its ending inventory using its historic absorption ratio will not exceed $100,000 and, therefore, L does not fall within the specific dollar amount test of paragraph (b)(4)(ii)(C)(*4*)(*ii*) of this section. Although L's additional section 263A costs increased by over $100,000 in 1999 (they increased by $500,000) as a result of placing the plant and equipment into service, only a portion of that amount will be allocated to ending inventory. L's inventory turns over approximately fifteen times a year. Of the $500,000 of additional section 263A costs incurred as the result of placing the plant and equipment into service in 1999, only about $33,000 ($500,000 ÷ 15) will be allocated to ending inventory. Since $33,000 is well below the $100,000 threshold, L can determine without calculating an actual absorption ratio for 1999 that its historic absorption ratio is not materially inaccurate. Since L's historic absorption ratio is not materially inaccurate in 1999, L's qualifying period does not terminate early.

* * * * *

Par. 3. Section 1.263A-3 is amended as follows:

1. Paragraphs (d)(4)(ii)(C)(1) and (2) are revised;

2. New paragraphs (d)(4)(ii)(C)(3) and (4) are added;

3. Paragraph (d)(4)(vi) is amended by:

a. Revising the paragraph heading and introductory text;

b. Redesignating the *Example* as *Example 1*;

c. Adding new *Example 2.*

The revisions and additions read as follows:

§1.263A–3 Rules relating to property acquired for resale.

* * * * *

(d) * * *

(4) * * *

(ii) * * *

(C) *Qualifying period*—(1) *In general.* A qualifying period generally includes each of the first five taxable years beginning with the first taxable year after a test period (or an updated test period). However, a qualifying period may be extended under the provisions of paragraph (d)(4)(ii)(C)(*2*) of this section or may terminate early under the provisions of paragraph (d)(4)(ii)(C)(*3*) of this section.

(*2*) *Extension of qualifying period.* In the first taxable year following the close of each qualifying period, (e.g., the sixth taxable year following the test period), the taxpayer must compute the actual combined absorption ratio under the simplified resale method. If the actual combined absorption ratio computed for this taxable year (the recomputation year) is within one-half of one percentage point

(plus or minus) of the historic absorption ratio used in determining capitalizable costs for the qualifying period (e.g., the previous five taxable years), the qualifying period is extended to include the recomputation year and the following five taxable years (or a shorter period if the qualifying period is terminated early under the provisions of paragraph (d)(4)(ii)(C)(*3*) of this section), and the taxpayer must continue to use the historic absorption ratio throughout the extended qualifying period. If, however, the actual combined absorption ratio computed for the recomputation year is not within one-half of one percentage point (plus or minus) of the historic absorption ratio, the taxpayer must use actual combined absorption ratios beginning with the recomputation year under the simplified resale method and throughout the updated test period. The taxpayer must resume using the historic absorption ratio (determined with reference to the updated test period) in the third taxable year following the recomputation year.

(*3*) *Earlier termination of the qualifying period.* For taxable years beginning after [INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER], a qualifying period closes immediately prior to a taxable year in which the taxpayer's historic absorption ratio becomes materially inaccurate (early recomputation year). If the taxpayer's historic absorption ratio is materially inaccurate, as defined in paragraph (d)(4)(ii)(C)(*4*) of this section, the taxpayer must use its actual combined absorption ratios computed using the simplified resale method beginning with the early recomputation year and throughout the updated test period. The taxpayer must resume using the historic absorption ratio (determined with reference to the updated test period) in the third taxable year following the early recomputation year.

(*4*) *Materially inaccurate.* For purposes of this paragraph (d)(4), an historic absorption ratio becomes materially inaccurate in a taxable year that—

(*i*) The taxpayer's actual combined absorption ratio computed using the simplified resale method deviates by more than 50 percent and by more than one-half of one percentage point from the taxpayer's historic absorption ratio for that year; and

(*ii*) The amount of additional section 263A costs capitalizable to eligible property remaining on hand at the close of that year under the simplified resale method (using the taxpayer's actual combined absorption ratio) deviates by more than $100,000 from the amount of additional section 263A costs capitalizable to that property under the simplified resale method with historic absorption ratio election for that year.

* * * * *

(vi) *Examples.* The provisions of this paragraph (d)(4) are illustrated by the following examples:

Example 1. * * *

Example 2. (i) Taxpayer W operates a mail-order retail business and uses the FIFO method of accounting for inventories. In 1996, 1997 and 1998, W used the simplified resale method without the historic absorption ratio election with the variation permitted in paragraph (d)(3)(iii)(A) of this section, exclusion of beginning inventories from the denominator in the storage and handling costs absorption ratio formula. Taxpayer W elects to use the historic absorption ratio with the simplified resale method for 1999. W identifies the following costs incurred during the test period:

1996:
Add'l section 263A costs — $2,000,000 Section 471 costs — $45,000,000
1997:
Add'l section 263A costs — $2,500,000 Section 471 costs — $50,000,000
1998:
Add'l section 263A costs — $3,000,000 Section 471 costs — $55,000,000

(ii) Therefore, W computes a 5% historic absorption ratio as follows:

$$\text{Historic absorption ratio} = \frac{\$2{,}000{,}000 + 2{,}500{,}000 + 3{,}000{,}000}{\$45{,}000{,}000 + 50{,}000{,}000 + 55{,}000{,}000} = 5\%$$

(iii) In 1999, W decides to automate part of its repackaging activities. Accordingly, W places new repackaging equipment into service. The repackaging equipment has a basis of $15,000,000 for tax purposes. W's tax depreciation on the new equipment for 1999 is $3,000,000. This depreciation allowance is an additional section 263A cost and is a handling cost as defined in paragraph (c)(4) of this section. As a result of the new equipment, W's direct labor costs with respect to its repackaging activities decrease by $500,000 during 1999. In 1999, W incurs $60,000,000 of section 471 costs, of which $6,000,000 remain on hand at the end of the year. W identifies $6,000,000 of storage and handling costs, including W's tax depreciation on the new equipment and taking into account the reduction in direct labor costs, and $450,000 of purchasing costs incurred in 1999.

(iv) W must determine whether W's historic absorption ratio is materially inaccurate in 1999. In order to do so, W calculates W's actual combined absorption ratio for 1999 as follows:

$$\text{Storage \& handling costs absorption ratio} = \frac{\$6{,}000{,}000}{\$60{,}000{,}000} = 10\%$$

$$\text{Purchasing costs absorption ratio} = \frac{\$450{,}000}{\$60{,}000{,}000} = 0.75\%$$

Combined absorption ratio = 10% + 0.75% = 10.75%

(v) The difference between W's actual combined absorption ratio (10.75%) under the simplified resale method for 1999 and W's historic absorption ratio (5%) is 5.75%, which is greater than 50 percent of W's historic absorption ratio for that year (5% × 50% = 2.5%). Under the simplified resale method without the historic absorption ratio election, W determines the additional section 263A costs allocable to its ending inventory by multiplying its actual combined absorption ratio (10.75%) by the section 471 costs remaining in its ending inventory as follows:

Add'l section 263A costs = 10.75% × $6,000,000 = $645,000

(vi) Under the simplified resale method using the historic absorption ratio, W determines the additional section 263A costs allocable to its ending inventory by multiplying its historic absorption ratio (5%) by the section 471 costs remaining in its ending inventory as follows:

Add'l section 263A costs = 5% × $6,000,000 = $300,000

(vii) The difference between the amount of additional section 263A costs allocable to eligible property remaining on hand at the close of 1999 under the simplified resale method using the taxpayer's actual combined absorption ratio and the amount of additional section 263A costs allocable to that property under the simplified resale method with historic absorption ratio election ($645,000 – $300,000 = $345,000) exceeds $100,000. Accordingly, W's historic absorption ratio is materially inaccurate for 1999.

(viii) Since W's historic absorption ratio was materially inaccurate in 1999,

W's qualifying period closes immediately prior to the beginning of W's 1999 taxable year. Therefore, W must update its test period beginning in 1999. W must use actual combined absorption ratios under the simplified resale method beginning in 1999 and throughout the updated test period (2000 and 2001). W must resume using the historic absorption ratio (determined with reference to the updated test period) in 2002, the third taxable year following 1999.

* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on May 21, 1999, 8:45 a.m., and published in the issue of the Federal Register for May 24, 1999, 64 F.R. 27936)

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 law 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 the 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 Contribution 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.—Statements of Procedral 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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