

Internal Revenue bulletin

Bulletin No. 2008-48
December 1, 2008

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

T.D. 9430, page 1205.

REG-118327-08, page 1218.

Final, temporary, and proposed regulations under section 6050P of the Code relate to information returns for cancellation of indebtedness by certain entities. The regulations will avoid premature information reporting from certain businesses that are currently required to report and will reduce the number of information returns required to be filed. A public hearing on the proposed regulations is scheduled for March 13, 2009.

Rev. Proc. 2008-69, page 1217.

This procedure provides real estate investment trusts (REITs) with a method of applying the prohibited transactions safe harbor under section 857(b)(6) of the Code for a taxable year that begins on or before July 30, 2008, and ends on or after July 31, 2008.

Announcement 2008-105, page 1219.

The Fast Track Settlement (FTS) for TE/GE Taxpayers program is based on the LMSB and SB/SE FTS programs. The existing FTS programs promote early and timely settlements with taxpayers through the use of alternative dispute resolution techniques. The LMSB and SB/SE programs are designed to commence prior to the issuance of the 30-day letter and to reach a result within 120 days and 60 days respectively. The TE/GE FTS program will use the same procedures and have a 60-day period within which to reach settlement.

Announcement 2008-115, page 1228.

This document describes issues that the IRS and Treasury Department are considering addressing in a notice of proposed rulemaking (REG-130342-08) regarding the definition of an interest in real property. The notice of proposed rulemaking

would address certain rights granted by a governmental unit that are related to the lease, ownership, or use of real property.

EMPLOYEE PLANS

Notice 2008-105, page 1208.

Weighted average interest rate update; corporate bond indices; 30-year Treasury securities; segment rates.

This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in November 2008; the 24-month average segment rates; the funding transitional segment rates applicable for November 2008; and the minimum present value transitional rates for October 2008.

Rev. Proc. 2008-67, page 1211.

This document sets forth the procedure by which the sponsor of a multiemployer pension plan may request and obtain approval of an extension of an amortization period in accordance with section 431(d) of the Code and section 304(d) of the Employee Retirement Income Security Act of 1974 (ERISA). Rev. Proc. 2004-44 superseded. Rev. Proc. 2008-4 modified.

Announcement 2008-105, page 1219.

The Fast Track Settlement (FTS) for TE/GE Taxpayers program is based on the LMSB and SB/SE FTS programs. The existing FTS programs promote early and timely settlements with taxpayers through the use of alternative dispute resolution techniques. The LMSB and SB/SE programs are designed to commence prior to the issuance of the 30-day letter and to reach a result within 120 days and 60 days respectively. The TE/GE FTS program will use the same procedures and have a 60-day period within which to reach settlement.

(Continued on the next page)

Finding Lists begin on page ii.



Department of the Treasury
Internal Revenue Service

EXEMPT ORGANIZATIONS

Announcement 2008-105, page 1219.

The Fast Track Settlement (FTS) for TE/GE Taxpayers program is based on the LMSB and SB/SE FTS programs. The existing FTS programs promote early and timely settlements with taxpayers through the use of alternative dispute resolution techniques. The LMSB and SB/SE programs are designed to commence prior to the issuance of the 30-day letter and to reach a result within 120 days and 60 days respectively. The TE/GE FTS program will use the same procedures and have a 60-day period within which to reach settlement.

EMPLOYMENT TAX

Announcement 2008-105, page 1219.

The Fast Track Settlement (FTS) for TE/GE Taxpayers program is based on the LMSB and SB/SE FTS programs. The existing FTS programs promote early and timely settlements with taxpayers through the use of alternative dispute resolution techniques. The LMSB and SB/SE programs are designed to commence prior to the issuance of the 30-day letter and to reach a result within 120 days and 60 days respectively. The TE/GE FTS program will use the same procedures and have a 60-day period within which to reach settlement.

EXCISE TAX

Announcement 2008-105, page 1219.

The Fast Track Settlement (FTS) for TE/GE Taxpayers program is based on the LMSB and SB/SE FTS programs. The existing FTS programs promote early and timely settlements with taxpayers through the use of alternative dispute resolution techniques. The LMSB and SB/SE programs are designed to commence prior to the issuance of the 30-day letter and to reach a result within 120 days and 60 days respectively. The TE/GE FTS program will use the same procedures and have a 60-day period within which to reach settlement.

ADMINISTRATIVE

Announcement 2008-110, page 1224.

This announcement will extend the test of the Fast Track Settlement (FTS) for SB/SE Taxpayers Pilot Program for an additional two years to further evaluate the program and seek additional cases for fast track settlement.

Announcement 2008-111, page 1224.

This announcement modifies Revenue Procedures 2002-44, 2002-2 C.B. 10, and 2006-44, 2006-2 C.B. 800, by establishing a two-year test of the mediation and arbitration procedures for Offer in Compromise and Trust Fund Recovery Penalty

cases that are under the jurisdiction of the Office of Appeals. Rev. Procs. 2002-44 and 2006-44 modified.

Announcement 2008-114, page 1226.

This document contains corrections to final regulations under section 1502 of the Code (T.D. 9424, 2008-44 I.R.B. 1012) that provide rules for determining the tax consequences of a member's transfer (including by deconsolidation and worthlessness) of loss shares of subsidiary stock. The regulations also provide that section 362(e)(2) generally does not apply to transactions between members of a consolidated group.

Announcement 2008-116, page 1230.

This document cancels a public hearing on proposed regulations (REG-102822-08, 2008-38 I.R.B. 744) that provide guidance on the manner in which an S corporation reduces its tax attributes under section 108(b) for taxable years in which the S corporation has discharge of indebtedness income that is excluded from gross income under section 108(a).

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying

the tax law with integrity and fairness to all.

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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

Section 431.—Minimum Funding Standards for Multiemployer Plans

A revenue procedure sets forth the procedure by which the sponsor of a multiemployer pension plan may request and obtain approval of an extension of an amortization period in accordance with section 431(d). See Rev. Proc. 2008-67, page 1211.

Section 6050P.—Returns Relating to the Cancellation of Indebtedness by Certain Entities

26 CFR 1.6050P-1: Information reporting for discharges of indebtedness by certain entities.

T.D. 9430

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Information Reporting for Discharges of Indebtedness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to information returns for cancellation of indebtedness by certain entities. The temporary regulations will avoid premature information reporting from certain businesses that are currently required to report and will reduce the number of information returns required to be filed. The temporary regulations will impact certain lenders who are currently required to file information returns under the existing regulations. The text of these temporary regulations also serves as the text of the proposed regulations (REG-118327-08) as set forth in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on November 10, 2008.

Applicability Date: For dates of applicability, see §1.6050P-1T(h).

FOR FURTHER INFORMATION CONTACT: Barbara Pettoni at (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6050P relating to information reporting for cancellation of indebtedness by certain entities. The amendments will reduce the number of information reports required to be filed under section 6050P.

In general, section 6050P requires certain entities to file information returns with the IRS, and to furnish information statements to debtors, reporting discharges of indebtedness of \$600 or more. As originally enacted by the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66 (107 Stat. 312, 531-532 (1993)), section 6050P applied solely to “applicable financial entities,” which was then defined to include only financial institutions, credit unions, and Federal executive agencies.

In 1996, final regulations were published implementing section 6050P. See T.D. 8654, 1996-1 C.B. 298 [61 FR 262] (January 4, 1996) (the 1996 regulations). The 1996 regulations required applicable financial entities, as then defined, to issue Forms 1099-C, “*Cancellation of Debt*,” upon the occurrence of one of several “identifiable events” as provided in §1.6050P-1(b)(2)(i)(A) through (H). One of these identifiable events requiring the issuance of a Form 1099-C was the expiration of a “non-payment testing period” pursuant to §1.6050P-1(b)(2)(i)(H). The 1996 regulations created a rebuttable presumption (the “36-month rule”) under §1.6050P-1(b)(2)(iv) that this period expired if a creditor had not received a payment for 36 months. Section 1.6050P-1(b)(2)(iv) provides that the presumption that an identifiable event occurred can be rebutted by a creditor if the creditor had engaged in significant, *bona fide* collection activity.

After the issuance of the 1996 regulations, the Debt Collection Improve-

ment Act of 1996, Public Law 104-134 (110 Stat. 1321, 368-369 (1996)) (the 1996 Act), expanded section 6050P to cover any executive, judicial, or legislative agency (as defined in 31 U.S.C. 3701(a)(4)) as well as any applicable financial entity. The 1996 Act was effective April 26, 1996. The Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170 (113 Stat. 1860, 1931 (1999)) (the 1999 Act), further expanded section 6050P by expanding the definition of “applicable financial entity” to include any organization “a significant trade or business of which is the lending of money.” The 1999 Act was effective for discharges of indebtedness occurring after December 31, 1999.

In 2002, the IRS and the Treasury Department published proposed regulations to reflect the changes to section 6050P. See REG-107524-00, 2002-2 C.B. 110 [67 Fed Reg 40629] (June 13, 2002). The IRS received written (including electronic) comments on the proposed regulations and a public hearing was held on October 8, 2002. After consideration of the comments received, the IRS adopted the proposed regulations with amendments. See T.D. 9160, 2004-2 C.B. 785 [69 FR 62181] (October 25, 2004) (the 2004 regulations). Section 1.6050P-2 of the 2004 regulations describes the circumstances in which an organization has a significant trade or business of lending money, thereby triggering an information reporting requirement when it cancels debt.

Reasons for Change

The 36-month rule of §1.6050P-1(b)(2)(iv) was drafted at a time when section 6050P applied only to financial institutions, credit unions, and Federal executive agencies and did not extend to any executive, judicial, or legislative agency or any organization “a significant trade or business of which is the lending of money.” Since the publication of the 2004 regulations, commenters have raised the concern that the application of the 36-month rule to entities with a significant

trade or business of lending money might trigger a reporting requirement even when the entity has not legally or practically discharged the debt. The IRS and the Treasury Department agree that it is appropriate to limit the application of the 36-month rule to the entities for which it was originally intended in order to avoid premature information reporting of cancellation of indebtedness income. Doing so will reduce the information reporting burden on entities that were not originally within the scope of the 36-month rule and will protect debtors from receiving information returns that prematurely report cancellation of indebtedness income from such entities.

The Treasury Department and IRS are still considering other comments received since the publication of the 2004 regulations, including a request to clarify the meaning of “stated principal” in section 1.6050P-1(c) and (d)(3) when it is applied to those who acquire a loan from a person other than the debtor. Section 1.6050P-1(c) provides that “indebtedness” for purposes of section 6050P means any amount owed to an applicable entity, including stated principal, fees, stated interest, penalties, administrative costs, and fines. Section 1.6050P-1(d)(3) further provides that, in the case of a lending transaction, the discharge of an amount other than stated principal is not required to be reported under section 6050P. Commenters have stated that it is unclear whether the simplifying rule limiting an information report to the amount of stated principal can be applied to loan acquirers. Commenters have asserted that loan acquirers might know only the aggregate amount due on the loans they are purchasing, not the breakdown of that amount into principal and accrued interest or fees. Therefore, if loan acquirers discharge an aggregate amount, it is difficult for them to determine how much is required to be reported under section 6050P. The Treasury Department and IRS are considering issuing future guidance under section 6050P to address these concerns.

Explanation of Provisions

The temporary regulations and amendments to existing regulations limit the application of the 36-month rule to the entities described in the 1993 Act. The

temporary regulations avoid premature information reporting from certain entities that are currently required to report under section 6050P. Notwithstanding this limitation, the temporary regulations provide that, in the case of an entity previously subject to the 36-month rule that was required to file information returns in a tax year prior to 2008 due to application of the 36-month rule, and who failed to so file, the date of discharge is the first identifiable event, if any, described in section 1.6050P-1(b)(2)(i)(A) through (G) that occurs after 2007. Thus, any entity previously subject to the 36-month rule that has never filed an information return remains subject to the information reporting requirement upon the occurrence of any of the other identifiable events.

Special Analyses

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

For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these temporary regulations is Barbara Pettoni, Office of Associate Chief Counsel (Procedure and Administration).

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Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

- Authority: 26 U.S.C. 7805 * * *
- Par. 2. Section 1.6050P-0 is amended as follows:
1. The introductory text is revised.
 2. A new entry for §1.6050P-1(b)(2)(v) is added.
 3. The entry for §1.6050P-1(h) is revised.
 4. A new entry for §1.6050P-1T is added.

The revisions and additions read as follows:

§1.6050P-0. Table of contents.

This section lists the major captions that appear in §1.6050P-1, §1.6050P-1T, and §1.6050P-2.

* * * * *

1.6050P-1 Information reporting for discharges of indebtedness by certain entities.

- (b) * * *
- (2) * * *
- (v) [Reserved]. For further guidance, see the entry for §1.6050P-1T(b)(2)(v).

* * * * *

- (h) Effective/applicability date.

* * * * *

§1.6050P-1T Information reporting for discharges of indebtedness by certain entities (temporary).

- (b) * * *
- (2) * * *
- (v) Special rule for certain entities required to file in a year prior to 2008.

* * * * *

Par. 3. Section 1.6050P-1 is amended as follows:

1. Paragraph (b)(2)(i)(H) and the heading for paragraph (h) are revised.
2. A new entry for (b)(2)(v) is added.

The addition and revisions read as follows:

§1.6050P-1 Information reporting for discharges of indebtedness by certain entities.

* * * * *

- (b) * * * (2) * * *
- (i) * * *
- (H) [Reserved]. For further guidance, see §1.6050P-1T(b)(2)(i)(H).

* * * * *

(v) [Reserved]. For further guidance, see §1.6050P-1T(b)(2)(v).

* * * * *

(h) *Effective/applicability date.* * * *

Par. 4. Section 1.6050P-1T is added to read as follows:

§1.6050P-1T Information reporting for discharges of indebtedness by certain entities (temporary).

(a) through (b)(2)(i)(G) [Reserved]. For further guidance, see §1.6050P-1(a) through (b)(2)(i)(G).

(H) In the case of an entity described in section 6050P(c)(2)(A) through (C), the expiration of the non-payment testing period, as described in §1.6050P-1(b)(2)(iv).

(b)(2)(ii) through (iv) [Reserved]. For further guidance, see §1.6050P-1(b)(2)(ii) through (iv).

(v) *Special rule for certain entities required to file in a year prior to 2008.* In the case of an entity described in section 6050P(c)(1)(A) or (c)(2)(D) required to file an information return in a tax year prior to 2008 due to an identifiable event described in paragraph (b)(2)(i)(H), and who failed to so file, the date of discharge is the first event, if any, described in paragraphs (b)(2)(i)(A) through (G) of this section that occurs after 2007.

(b)(3) through (g) [Reserved]. For further guidance, see §1.6050P-1(b)(3) through (g).

(h) *Effective/applicability date—(1) In general.* The rules in this section apply

to discharges of indebtedness after December 21, 1996, except paragraphs (e)(1) and (e)(3) of this section, which apply to discharges of indebtedness after December 31, 1994, except paragraph (e)(5) of this section, which applies to discharges of indebtedness occurring after December 31, 2004, and except paragraphs (b)(2)(i)(H) and (b)(2)(v) of this section, which apply to discharges of indebtedness occurring after November 10, 2008.

(2) [Reserved]. For further guidance, see §1.6050P-1(h)(2).

(i) *Expiration date.* The applicability of this section will expire on or before November 7, 2011.

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

Approved October 28, 2008.

Eric Solomon,
*Assistant Secretary of
the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on November 7, 2008, 8:45 a.m., and published in the issue of the Federal Register for November 10, 2008, 73 F.R. 66539)

Section 6672.—Failure to Collect and Pay Over Tax, or Attempt to Evade or Defeat Tax

An announcement modifies Revenue Procedure 2002-44, 2002-2 C.B. 10, and Revenue Procedure 2006-44, 2006-2 C.B. 800, by establishing a two-year

test of the mediation and arbitration procedures for Offer in Compromise (OIC) and Trust Fund Recovery Penalty (TFRP) cases that are under the jurisdiction of the Office of Appeals. See Announcement 2008-111, page 1224.

Section 7122.—Compromises

An announcement modifies Revenue Procedure 2002-44, 2002-2 C.B. 10, and Revenue Procedure 2006-44, 2006-2 C.B. 800, by establishing a two-year test of the mediation and arbitration procedures for Offer in Compromise (OIC) and Trust Fund Recovery Penalty (TFRP) cases that are under the jurisdiction of the Office of Appeals. See Announcement 2008-111, page 1224.

Section 7123.—Appeals Dispute Resolution Procedures

An announcement modifies Revenue Procedure 2002-44, 2002-2 C.B. 10, and Revenue Procedure 2006-44, 2006-2 C.B. 800, by establishing a two-year test of the mediation and arbitration procedures for Offer in Compromise (OIC) and Trust Fund Recovery Penalty (TFRP) cases that are under the jurisdiction of the Office of Appeals. See Announcement 2008-111, page 1224.

Part III. Administrative, Procedural, and Miscellaneous

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

Notice 2008-105

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

imum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

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

Notice 2004-34, 2004-1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate

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

The composite corporate bond rate for October 2008 is 7.90 percent. Pursuant to Notice 2004-34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

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

For Plan Years Beginning in		Corporate Bond Weighted Average	Permissible Range	
Month	Year		90%	100%
November	2008	6.20	5.58	6.20

YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates

(“segment rates”), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. For plan years beginning in 2008 and 2009, a transitional rule under § 430(h)(2)(G) provides that the segment rates are blended with the corporate bond weighted average as specified above. An election may be made under § 430(h)(2)(G)(iv) to use the segment rates without applying the transitional rule.

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the

monthly corporate bond yield curve, the 24-month average corporate bond segment rates, and the funding transitional segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007-81, the monthly corporate bond yield curve derived from October 2008 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of October 2008 are, respectively, 7.35, 8.61, and 7.26. The three 24-month average corporate bond segment rates applicable for November 2008 under the election of § 430(h)(2)(G)(iv) are as follows:

First Segment	Second Segment	Third Segment
5.17	6.28	6.62

The transitional segment rates under § 430(h)(2)(G) applicable for November 2008, taking into account the corporate

bond weighted average of 6.20 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	5.86	6.23	6.34
2009	5.51	6.25	6.48

30-YEAR TREASURY SECURITIES INTEREST RATES

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

rate of interest on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury securities for October 2008 is 4.17 percent. The Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in May 2038.

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum

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

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range	
Month	Year		90%	to 105%
November	2008	4.68	4.21	4.91

MINIMUM PRESENT VALUE SEGMENT RATES

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a

24-month average. For plan years beginning in 2008 through 2011, the applicable interest rate is the monthly spot segment rate blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007-81 provides guidelines for determin-

ing the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for October 2008, taking into account the October 2008 30-year Treasury rate of 4.17 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	4.81	5.06	4.79
2009	5.44	5.95	5.41

DRAFTING INFORMATION

The principal author of this notice is Tony Montanaro of the Employee Plans,

Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at RetirementPlanQuestions@irs.gov.

Table I
 Monthly Yield Curve for October 2008

<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>
0.5	5.45	20.5	8.11	40.5	7.17	60.5	6.87	80.5	6.72
1.0	6.19	21.0	8.06	41.0	7.15	61.0	6.86	81.0	6.72
1.5	6.83	21.5	8.02	41.5	7.14	61.5	6.86	81.5	6.71
2.0	7.32	22.0	7.97	42.0	7.13	62.0	6.85	82.0	6.71
2.5	7.64	22.5	7.93	42.5	7.12	62.5	6.85	82.5	6.71
3.0	7.83	23.0	7.89	43.0	7.11	63.0	6.85	83.0	6.71
3.5	7.95	23.5	7.85	43.5	7.10	63.5	6.84	83.5	6.70
4.0	8.03	24.0	7.81	44.0	7.09	64.0	6.84	84.0	6.70
4.5	8.11	24.5	7.77	44.5	7.09	64.5	6.83	84.5	6.70
5.0	8.18	25.0	7.74	45.0	7.08	65.0	6.83	85.0	6.70
5.5	8.25	25.5	7.71	45.5	7.07	65.5	6.82	85.5	6.69
6.0	8.33	26.0	7.68	46.0	7.06	66.0	6.82	86.0	6.69
6.5	8.41	26.5	7.65	46.5	7.05	66.5	6.81	86.5	6.69
7.0	8.50	27.0	7.62	47.0	7.04	67.0	6.81	87.0	6.69
7.5	8.57	27.5	7.59	47.5	7.03	67.5	6.81	87.5	6.68
8.0	8.65	28.0	7.57	48.0	7.03	68.0	6.80	88.0	6.68
8.5	8.71	28.5	7.54	48.5	7.02	68.5	6.80	88.5	6.68
9.0	8.77	29.0	7.52	49.0	7.01	69.0	6.80	89.0	6.68
9.5	8.81	29.5	7.50	49.5	7.00	69.5	6.79	89.5	6.67
10.0	8.85	30.0	7.48	50.0	7.00	70.0	6.79	90.0	6.67
10.5	8.87	30.5	7.46	50.5	6.99	70.5	6.78	90.5	6.67
11.0	8.89	31.0	7.44	51.0	6.98	71.0	6.78	91.0	6.67
11.5	8.89	31.5	7.42	51.5	6.97	71.5	6.78	91.5	6.67
12.0	8.89	32.0	7.40	52.0	6.97	72.0	6.77	92.0	6.66
12.5	8.87	32.5	7.39	52.5	6.96	72.5	6.77	92.5	6.66
13.0	8.85	33.0	7.37	53.0	6.95	73.0	6.77	93.0	6.66
13.5	8.82	33.5	7.35	53.5	6.95	73.5	6.76	93.5	6.66
14.0	8.79	34.0	7.34	54.0	6.94	74.0	6.76	94.0	6.66
14.5	8.74	34.5	7.32	54.5	6.94	74.5	6.76	94.5	6.65
15.0	8.70	35.0	7.31	55.0	6.93	75.0	6.75	95.0	6.65
15.5	8.65	35.5	7.29	55.5	6.92	75.5	6.75	95.5	6.65
16.0	8.60	36.0	7.28	56.0	6.92	76.0	6.75	96.0	6.65
16.5	8.54	36.5	7.26	56.5	6.91	76.5	6.74	96.5	6.65
17.0	8.49	37.0	7.25	57.0	6.91	77.0	6.74	97.0	6.64
17.5	8.43	37.5	7.24	57.5	6.90	77.5	6.74	97.5	6.64
18.0	8.38	38.0	7.22	58.0	6.89	78.0	6.73	98.0	6.64
18.5	8.32	38.5	7.21	58.5	6.89	78.5	6.73	98.5	6.64
19.0	8.27	39.0	7.20	59.0	6.88	79.0	6.73	99.0	6.64
19.5	8.22	39.5	7.19	59.5	6.88	79.5	6.73	99.5	6.63
20.0	8.16	40.0	7.18	60.0	6.87	80.0	6.72	100.0	6.63

26 CFR 601.201: Rulings and determination letters.
(Also: Part I, § 431.)

Rev. Proc. 2008-67

SECTION 1. PURPOSE

This revenue procedure describes the procedure by which the plan sponsor of a multiemployer pension plan may request and obtain approval of an extension of an amortization period in accordance with § 431(d) of the Internal Revenue Code of 1986 (Code).

SECTION 2. BACKGROUND INFORMATION

.01 *Statute*—Section 431(d) was added to the Code as part of a significant revision of the funding rules for qualified pension plans under § 401(a) made by the Pension Protection Act of 2006 (PPA). Parallel provisions to § 431(d) can be found at section 304(d) of the Employee Retirement Income Security Act of 1974 (ERISA). The Secretary of the Treasury has interpretive and enforcement jurisdiction over both provisions.

Section 431(d)(1) provides that if the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the amortization period for any unfunded liability, and includes the certification by the plan's actuary described in § 431(d)(1)(B), the Secretary shall extend the amortization period for the period (not in excess of 5 years) requested in the application. An extension under § 431(d)(1) is referred to as an automatic extension. In addition, § 431(d)(2)(A) provides that the plan sponsor of a multiemployer plan may submit an application for an extension of the amortization period for an unfunded liability, and the Secretary may extend the amortization period for a period of time not in excess of 10 years less the number of years of any automatic extension with respect to such unfunded liability, if the Secretary makes the determination described in § 431(d)(2)(B). An extension under § 431(d)(2) is referred to as an alternative extension. Section 431(d)(3) requires that an applicant provide notice of the extension request to each affected

party described in section 4001(a)(21) of ERISA.

Before amendment by PPA, § 412(e) of the Code and § 304(a) of ERISA provided that the period of years required to amortize any unfunded liability of any plan may, upon application by the plan sponsor, be extended for a period up to 10 years. Those provisions were replaced with new § 431(d) of the Code and new section 304(d) of ERISA, effective for plan years starting after December 31, 2007.

Effective for plan years starting after December 31, 2007, there is no provision in the Code for single employer plans to receive an extension of the amortization period for any unfunded liability.

SECTION 3. APPLICATIONS TO EXTEND AN AMORTIZATION PERIOD — IN GENERAL

.01 *Who may submit*—A request for approval to extend the period of years required to amortize any unfunded liability must be submitted by the plan sponsor (*i.e.*, the board of trustees of the plan, and referred to in this revenue procedure as the applicant, or Board) or by an authorized representative of the applicant. The request must be signed by an authorized trustee who is a current member of the Board or by an authorized representative of the applicant who either must be identified in (a), (b), or (c) of subsection 9.02(11) of Rev. Proc. 2008-4, 2008-1 I.R.B. 121, or must be an enrolled actuary within the meaning of § 7701(a)(35). Where an authorized representative signs the request or will appear before the Service in connection with the request, a Form 2848, *Power of Attorney and Declaration of Representative*, must be submitted with the request. An individual is not an authorized representative of the applicant merely on account of being an administrator or trustee of the plan.

.02 *Submission*—Applications to extend an amortization period must be submitted to:

Employee Plans
Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

The user fee required by Rev. Proc. 2008-8, 2008-1 I.R.B. 233, or its successors, must be sent with such requests.

.03 *Necessary Procedural Documents*.—A request will not be considered unless it complies with (1) and (2) below.

(1) The request must contain a declaration in the following form: "Under the penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the request are true, correct, and complete." This declaration must be signed by an authorized trustee who is a current member of the Board. The signature of an individual with a power of attorney will not suffice for the declaration. See § 9.02(13) of Rev. Proc. 2008-4.

(2) Because an application for an extension constitutes a request for a ruling, compliance with § 6110 is also required. Section 601.201 of the Statement of Procedural Rules sets forth the requirements applicable to requests for rulings and determination letters which are subject to § 6110. Section 601.201(e) furnishes specific instructions to applicants.

The applicant must provide with the request either a statement of proposed deletions and the statutory basis for each proposed deletion, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted.

.04 *Notification*.—The applicant must provide a copy of a written notification to each employee organization representing employees covered by the plan, to each contributing employer, and to each participant, beneficiary, and alternate payee of the plan, that an application for an extension of the amortization period under § 431(d) has been submitted to the Service. The original of this notice must bear a signature by an authorized trustee who is a current member of the Board and must be in substantially the form set forth in the Model Notice found in the Appendix A to this revenue procedure. The Service does not require the applicant to furnish any information in addition to that required by the Model Notice in the Appendix A to plan participants, beneficiaries, alternate payees, or employee organizations as part of the extension application process, but additional information may, of course, be

provided by the applicant pursuant to the collective bargaining process or otherwise.

The notice must be hand-delivered or mailed to the last known address of each employee organization, participant, beneficiary, and alternate payee (within the meaning of § 414(p)(8)) within 14 days prior to the date of the application. Alternatively, the notice may be delivered electronically in accordance with the requirements of § 1.401(a)-21 of the Income Tax Regulations. Merely posting the notice on a bulletin board is not sufficient to satisfy this notice requirement. If the applicant makes a reasonable effort to carry out the provisions of this paragraph, then failure of an employee organization, participant, beneficiary, or alternate payee to receive the notice will not cause the applicant to fail the notice requirement.

The application must state the method used by the applicant to satisfy this notice requirement.

.05 Providing Information.—Employers who have difficulty in furnishing the information specified in this revenue procedure may call the Employee Plans Customer Assistance Service at 1-877-829-5500 (a toll-free number), or write for guidance to the following address:

Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA:T:A2
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

In appropriate instances, pre-submission conferences may be afforded in addition to conferences available under Rev. Proc. 2008-8.

.06 Coordination of Extension Applications.—The total period of extensions permitted under paragraphs (1) and (2) of § 431(d) of the Code is limited to 10 years. Section 4 of this revenue procedure relates to automatic extensions under § 431(d)(1). Section 5 of this revenue procedure relates to alternative extensions under § 431(d)(2). An automatic extension for a plan may not exceed 5 years. An alternative extension may be for up to 10 years less any automatic extension approved. An applicant requesting both types of extension may do so in a single application. However, such a submission must include the information specified in

section 4.01 below (including the actuarial certification described in section 4.01(4)), the information required in section 5.01 below and a completed copy of the checklist that appears as Appendix B of this revenue procedure. Such a combined application will be considered a single ruling request. If the applicant requests both types of extensions in a single application, the Service may approve the automatic extension without approving the alternative extension.

.07 Interim Effect of Application.—Whether the Service has ruled on the application does not affect the 90 day deadline for certification under § 432(b)(3) of the Code. In making this certification, the actuary should not take into account any extension application under § 431(d) before the application receives a favorable ruling.

SECTION 4—APPLICATION FOR AUTOMATIC EXTENSION

.01 Information to be provided.—The applicant must furnish the following information:

1. The unfunded liability for which an extension of the amortization period is requested.

2. The length of the extension of the amortization period being requested (up to a maximum of 5 years).

3. Whether a prior application for an amortization extension (automatic or alternative) was submitted, whether an application was granted under § 412(e) with respect to the prior 15 plan years, and whether the plan is in endangered or critical status as determined under section 432(b)(3) in the first plan year for which the extension is requested.

4. A certification by the plan's actuary that, based on reasonable assumptions:

(i) absent the extension for which the plan is applying, the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

(ii) the plan sponsor has devised a plan to improve the plan's funding status,

(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

(iv) the notice required under § 431(d)(3)(A) has been provided, in

accordance with § 3.04 this revenue procedure.

.02 Ruling.—Upon receipt of the application with the necessary information, and verification that the criteria stated above have been met, the Secretary shall issue a statement to the applicant providing approval for the requested extension.

.03 Applicable Period.—The procedures of this § 4 shall not apply with respect to any application submitted after December 31, 2014, in accordance with § 431(d)(1)(C).

SECTION 5—APPLICATION FOR ALTERNATIVE EXTENSION

.01 Information to be provided.—The applicant must furnish appropriate evidence that the extension of the amortization period would carry out the purposes of ERISA and PPA and would provide adequate protection for the participants and their beneficiaries, and that the failure to permit the extension would (I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and (II) would be adverse to the interests of the plan participants in the aggregate. What constitutes appropriate evidence will depend on the facts and circumstances of each case. A response must be furnished for each of the paragraphs (1) through (6) below. In certain cases, some of the material described in paragraphs (1) through (6) may be inapplicable, unavailable, inappropriate or burdensome to furnish. In such cases, the applicant must furnish a statement indicating why the material for a particular paragraph is inapplicable, unavailable, inappropriate or burdensome.

(1) *General facts concerning the participating employers.*

A brief statement should be submitted concerning: (a) the history of the contributing employers and the industry or industries covered by the plan; (b) the ownership of the principal employers (as identified below) and any recent or contemplated changes (such as acquisitions, mergers, discontinuances of operations) which might have a bearing on the employers' organizations or general financial condition; (c) any recently withdrawn principal employers with the withdrawal liability amounts

and dates applicable; and (d) a general description of the financial state of the industry in which employees covered by the plan are employed.

(2) *The financial condition of the principal employers.*

For purposes of this revenue procedure, the principal employers are those employers who are (1) directly represented on the applicant board of trustees or (2) made or are required to make five percent or more of the total required contributions under the collective bargaining agreements relating to the plan for which the extension is requested. Each of the principal employers must submit the latest available annual financial report of the employer and each of the other entities included within the controlled group of which the employer is a member. This submission must include at least the balance sheet, profit and loss statement, cash flow statement, and notes to the financial statement. Recent interim financial reports for each of the controlled group members, if available, must also be submitted along with an interim financial report covering the corresponding period for the previous year. If the employer submits financial reports to the Securities and Exchange Commission, these reports must be submitted for the same period as the annual financial report. Preferably, the financial report should include certified financial statements. If certified financial statements have not been prepared, an uncertified report is acceptable. If neither certified nor uncertified reports are available, a copy of the company's latest available federal income tax return, including all of the supporting schedules, must be submitted. The required financial information of the principal employers should be submitted directly from each employer to the Service at the following address, at the same time that the application is made:

Employee Plans
Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

(3) *Information concerning the extension of the amortization period.* Information concerning the extension of the amortization period must include the following.

1. The unfunded liability for which an extension of the amortization period is requested.

2. The reasons why an extension of the amortization period is needed.

3. The length of the extension of the amortization period desired (up to a maximum of 10 years less any automatic extension).

4. Information concerning the actions taken by the applicant to reduce the plan's unfunded liability before the request for an extension has been made. Such actions would include the reduction of future plan benefit accruals and increases in employer contribution rates. Also describe any benefit reductions, contribution rate increases, or other actions that are intended to be taken in the future.

5. Projections of (i) funding standard account credit balance/accumulated funding deficiencies, (ii) actuarial value of assets and market value of assets, (iii) current liabilities, and (iv) funding ratios, for the length of the extension of the amortization period requested and for the period 10 years afterwards. For example, if the applicant requests an extension of 10 years (including a five-year automatic extension), the projections must be for a 20-year period. These projections must be prepared by an enrolled actuary.

6. The plan year for which the extension is requested, *i.e.*, the first plan year for which the extension of the amortization period will be reflected in the determination of the minimum funding standard for the plan (*e.g.*, 1/1/2008–12/31/2008).

The Service may request additional information as needed.

(4) *Facts concerning the pension plan.* For each pension plan for which an extension is requested, the following information must be supplied.

1. The name of the plan, the plan's identification number, and file folder number (if any).

2. The date the plan was adopted.

3. The effective date of the plan.

4. The classes of employees covered.

5. The number of employees covered.

6. A copy of the current plan document and the most recent summary plan description.

7. A copy of the most recent determination letter issued to the plan.

8. A brief description of all plan amendments adopted during the year for which

the extension is requested and the previous four years which affect plan costs, including the approximate effect of each amendment on such costs.

9. The most recent actuarial report plus any available actuarial reports for the preceding two plan years. Also, if not shown in that report, the present value of accrued benefits, present value of vested benefits, and fair market value of assets (excluding contributions not yet paid).

10. A description of how the plan is funded (*i.e.*, trust fund, individual insurance policies, etc.).

11. A list of the contributions actually paid in each month, from the twenty-fourth month prior to the beginning of the plan year for which the extension is requested through the date of the request and the plan year to which the contributions were applied, with the employee contributions and the employer contributions listed separately.

12. The approximate contribution required to meet the minimum funding standard. For defined benefit plans, this amount must be determined by the plan's enrolled actuary.

13. A copy of the most recently completed *Annual Return/Report of Employee Benefit Plan* (Form 5500 series, as applicable) and in the case of a defined benefit plan, a copy of the corresponding *Actuarial Information* schedule (Schedule B of Form 5500 for plan years beginning before 2008, or Schedule MB for plan years beginning after 2007).

14. A copy of each ruling letter that waived the minimum funding standard during the last 15 plan years, a statement of the amount waived for each plan year, and a statement of the outstanding balance of the amortization base for each waived funding deficiency. The outstanding balance of the amortization base for each waiver is to be calculated as of the first day of the plan year for which an extension is being requested.

15. A copy of each ruling letter that granted under § 431(d) or under § 412(e) of the Code as in effect prior to January 1, 2008, an extension of time to amortize any unfunded liability which became applicable at any time during the last 15 plan years.

16. A copy of the certification of whether or not the plan is in critical status or endangered status, in accordance with

the requirements of § 432(b)(3), for the first plan year for which the extension is requested.

17. A copy of any funding improvement plan or rehabilitation plan to which the plan is currently subject in accordance with § 432, or to which the plan has been subject at any time within the 10 years preceding the date of this application and all updates to the funding improvement plan or rehabilitation plan.

(5) *Other information.*

1. Describe the nature of any matters pertaining to the plan which are currently pending or are intended to be submitted to the Service, the Department of Labor or the Pension Benefit Guaranty Corporation.

2. Furnish details of any existing arbitration, litigation, or court procedure which involves the plan.

.02 *Checklist.*—A checklist has been provided in Appendix B for the convenience of the applicant submitting the request. The checklist must be signed by the applicant or authorized representative and dated and placed on top of the request.

SECTION 6. DEADLINE FOR REQUESTING AN EXTENSION

All extension requests must be submitted by the last day of the first plan year for which the extension is intended to take effect. The Service will consider applications for extensions submitted after this date only upon a showing of good cause. In seeking an extension of an amortization period with respect to a plan year which has not yet ended, the applicant may have difficulty in furnishing sufficient current evidence in support of the request. For this reason, it is generally advised that a request not be submitted earlier than 90 days prior to the end of the plan year for which the extension is requested. This 90 day period does not apply to applications for an automatic extension. Section 431(d)(2)(C) of the Code requires that the Service act on the submission within 180 days of receiving an application for extension. An appli-

cation will not be considered received until the applicable information required as stated in sections 4.01, 5.01, and 5.02 of this revenue procedure has been received. The Service will provide notification to the applicant of the date upon which it has full receipt of required information. The Service will close the file on a submission for which not all of the required documentation is provided in a timely manner without issuing a ruling.

SECTION 7. BANKRUPTCY PETITIONS

If significant number of employers or any of the principal employers file a bankruptcy petition after the request for an extension of an amortization period is submitted to the Service, the applicant must provide to the Service an update to the information required to be submitted in § 5 of this revenue procedure, especially the financial information in sections 5.01(2) and (3).

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for all ruling requests received with respect to plan years starting after December 31, 2007.

SECTION 9. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2008-4 is modified to the extent that this revenue procedure provides special procedures for issuing rulings with respect to requests for an extension of an amortization period.

Rev. Proc. 2004-44, 2004-2 C.B. 134, is superseded effective for applications submitted with respect to plan years starting after December 31, 2007.

SECTION 10. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has 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 1545-1890

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.

The collection of information in this revenue procedure is in §§ 3, 4 and 5 and Appendix B. This collection of information is required to evaluate, process and obtain approval of the request for an extension of an amortization period. This information will be used to make determinations on extensions of the amortization period under § 431(d). The likely respondents are businesses or other for-profit institutions and nonprofit institutions.

The estimated total annual reporting/recordkeeping burden is 2500 hours.

The estimated annual burden per respondent/recordkeeper varies from 71 to 129 hours, depending on individual circumstances, with an estimated average burden of 100 hours. The estimated number of respondents/recordkeepers is 25.

The estimated annual frequency of responses is one.

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.

DRAFTING INFORMATION

The principal author of this revenue procedure is Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. Questions about this revenue procedure and its application may be directed by email to RetirementPlanQuestions@irs.gov.

APPENDIX A: MODEL NOTICE

**MODEL NOTICE OF APPLICATION FOR AN
EXTENSION OF AN AMORTIZATION PERIOD
TO EMPLOYEE ORGANIZATIONS (UNIONS),
PARTICIPANTS, BENEFICIARIES, AND ALTERNATE PAYEES**

This notice is to inform you that an application for an extension of an amortization period for unfunded liability under § 431(d) of the Internal Revenue Code (Code) and § 304(d) of the Employee Retirement Income Security Act of 1974 (ERISA) has been submitted by [INSERT APPLICANT'S NAME] to the Internal Revenue Service (Service) for the [INSERT PLAN NAME] for the plan year beginning [INSERT DATE].

Under § 431(d)(3)(B) of the Code and § 304(d)(3)(B) of ERISA, the Service will consider any relevant information submitted concerning this application for an extension of the amortization period for unfunded liability. You may send this information to the following address:

Director, Employee Plans
Internal Revenue Service
Attn: SE:T:EP:RA:T:A2
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Any such information should be submitted as soon as possible after you have received this notice. Due to the disclosure restrictions of § 6103 of the Code, the Service can not provide any information with respect to the extension request itself.

In accordance with § 104 of ERISA, annual financial reports for this plan, which include employer contributions made to the plan for any plan year, are available for inspection at the Department of Labor in Washington, D.C. Copies of such reports may be obtained upon request and upon payment of copying costs from the following address:

Public Disclosure Room
Room N-1513
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

In addition, pension plan actuarial information filed for 2008 and later plan years filed with the Department of Labor may be obtained at <http://dol.gov/ebsa/actuarialsearch.html>.

As required by § 104(b)(2) of ERISA, copies of the latest annual plan report are available for inspection at the principal office of the plan administrator, who is located at [INSERT ADDRESS]. As required under § 101(k)(1) of ERISA, copies of periodic actuarial reports, quarterly, semi-annual, or annual financial reports, and copies of any application for extension under § 304 of ERISA or § 431(d) of the Code may be obtained upon request and upon payment of a copying charge of [INSERT CHARGES] by writing to the plan administrator at the above address.

The following information is provided pursuant to § 304(d)(3) of ERISA and 431(d)(3) of the Code:

Present Value of Vested Benefits \$_____

Present Value of Benefits, calculated as though the plan terminated \$_____

Fair Market Value of Plan Assets \$_____

The above present values were calculated using an interest rate or rates of [INSERT INTEREST RATE(S)].

[SIGNATURE OF APPROPRIATE OFFICER OF THE PLAN SPONSOR]
[INSERT NAME]
[INSERT TITLE]

**APPENDIX B. REQUEST FOR ALTERNATIVE EXTENSION OF AN AMORTIZATION PERIOD CHECKLIST
IS YOUR SUBMISSION COMPLETE?**

Instructions

The Service will be able to respond more quickly to your request for an alternative extension of an amortization period if it is carefully prepared and complete. To ensure your request is in order, use this checklist. Answer each question in the checklist by inserting Y for yes, N for no, or N/A for not applicable, as appropriate, in the blank next to the item. Sign and date the checklist (as applicant or authorized representative) and place it on top of your request.

You must submit a completed copy of this checklist with your request. If a completed checklist is not submitted with your request, substantive consideration of your submission will be deferred until a completed checklist is received.

- _____ 1. If you want to designate an authorized representative, have you included a properly executed Form 2848 (*Power of Attorney and Declaration of Representative*)?
- _____ 2. Have you satisfied all the requirements of Rev. Proc. 2008-4 or its successors (especially concerning signatures and penalties of perjury statement)? (See § 3.03(1))
- _____ 3. Have you included a statement of proposed deletions? (See § 3.03(2))
- _____ 4. Have you included the user fee required under Rev. Proc. 2008-8 or its successors? (See § 3.02)
- _____ 5. Have you included a copy of the written notification that an application for an extension of an amortization period has been submitted and a statement that such notice was hand delivered or mailed to each employee organization, participant, beneficiary and alternate payee? (See § 5.02 and Appendix A)
- _____ 6. Have you included the general facts concerning the employer? (See § 5.01(1))
- _____ 7. Have you included a description of the industry's financial condition? (See § 5.01(2))
- _____ 8. Have you included information concerning the extension of the amortization period? (See § 5.01(3))
- _____ 9. Have you included information concerning the pension plan? (See § 5.01(4))
- _____ 10. Have you included information concerning other matters pertaining to the plan? (See § 5.01(5))

Signature

Date

Typed or printed name of person signing checklist

Title or Authority

26 CFR 601.601: Rules and regulations.
(Also: Part I, § 857.)

Rev. Proc. 2008-69

SECTION 1. PURPOSE

This revenue procedure provides real estate investment trusts (REITs) with a method for applying the prohibited transactions tax safe harbor under §§ 857(b)(6)(C)(iii) and (D)(iv) of the Internal Revenue Code for a taxable year that begins on or before July 30, 2008, and ends on or after July 31, 2008. Sections 857(b)(6)(C)(iii) and (D)(iv) were amended by the Housing Assistance Tax Act of 2008, Division C of Pub. L. No. 110-289 ("2008 Housing Act"), effective for sales made after July 30, 2008, the date of the 2008 Housing Act's enactment.

SECTION 2. BACKGROUND

.01 Section 857(b)(6) of the Code imposes a tax for each taxable year of a REIT equal to 100 percent of the net income derived from prohibited transactions. Under § 857(b)(6)(B)(iii), the term "prohibited transaction" means a sale or other disposition of property described in § 1221(a)(1) that is not foreclosure property.

.02 Section 857(b)(6)(C) excludes certain sales from the definition of a prohibited transaction ("the prohibited transaction safe harbor"). Under § 857(b)(6)(C), a sale of property that is a real estate asset as defined in § 856(c)(5)(B) is not a prohibited transaction if several requirements are satisfied. A similar safe harbor applies under § 857(b)(6)(D) for sales of property in connection with the trade or business of producing timber.

.03 Prior to the enactment of the 2008 Housing Act, §§ 857(b)(6)(C)(iii) and (D)(iv) provided that the prohibited transaction safe harbor applied only if—

- During the taxable year, the REIT made no more than 7 sales of property (other than sales of foreclosure prop-

erty or sales to which § 1033 applies) ("7-Sales Test"); or

- The aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which § 1033 applies) sold during the taxable year did not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the REIT as of the beginning of the taxable year ("10-Percent Adjusted Bases Test").

.04 Section 3052 of the 2008 Housing Act amended §§ 857(b)(6)(C)(iii) and (D)(iv) to provide an additional alternative test. Under this alternative test, the requirements of § 857(b)(6)(C)(iii) or (D)(iv) are satisfied if the aggregate fair market value of property (other than sales of foreclosure property or sales to which § 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the REIT as of the beginning of the taxable year ("10-Percent Fair Market Value Test"). This amendment is effective for sales made after July 30, 2008.

.05 Because this effective date is expressed in terms of sales made after a particular date, questions have arisen about how to interpret it for substantive provisions that apply as alternatives and are expressed in terms of sales during a taxable year.

SECTION 3. SCOPE

This revenue procedure applies to a REIT that seeks to apply the prohibited transaction safe harbor under § 857(b)(6)(C)(iii) or (D)(iv) for a taxable year that begins on or before July 30, 2008, and ends on or after July 31, 2008.

SECTION 4. APPLICATION

For a REIT's taxable year that begins on or before July 30, 2008, and ends on or after July 31, 2008, satisfaction of

§ 857(b)(6)(C)(iii) or of § 857(b)(6)(D)(iv) means that either—

- The REIT satisfies the 7-Sales Test (for the entire taxable year);
- The REIT satisfies the 10-Percent Adjusted Bases Test (for the entire taxable year); or
- Both —
 - The aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which § 1033 applies) sold during the portion of the taxable year ending on July 30, 2008, did not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the REIT as of the beginning of the taxable year (that is, the REIT satisfies the 10-Percent Adjusted Bases Test as if the portion of the taxable year ending on July 30, 2008, were an entire taxable year); and
 - The REIT satisfies the 10-Percent Fair Market Value Test (for the entire taxable year).

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective November 13, 2008.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Jonathan D. Silver of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Mr. Silver at (202) 622-3930 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations and Notice of Public Hearing

Information Reporting for Discharges of Indebtedness

REG-118327-08

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In this issue of the Bulletin, the IRS is issuing final and temporary regulations (T.D. 9430) relating to information returns for cancellation of indebtedness by certain entities. The temporary regulations will avoid premature information reporting from certain businesses that are currently required to report and will reduce the number of information returns required to be filed. The regulations will impact certain lenders who are currently required to file information returns under the existing regulations. The text of those temporary regulations also serves as text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by February 9, 2009. Outlines of topics to be discussed at the public hearing scheduled for March 13, 2009, must be received by February 13, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-118327-08), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-118327-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically

via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-118327-08). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Barbara Pettoni at (202) 622-4910; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in this issue of the Bulletin contain amendments to the Income Tax Regulations (26 CFR Part 1) under section 6050P relating to information reporting for cancellation of indebtedness by certain entities. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It 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. The proposed regulations under section 6050P do not impose a collection of information on small entities. Therefore, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. The proposed regulations will reduce the number of information returns required to be filed under section 6050P rather than impose a collection of information on entities. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel

for Advocacy of the Small Business Administration for comment on its impact on small business.

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 Treasury Department and the IRS request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing has been scheduled for March 13, 2009, beginning at 10:00 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. 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 more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this 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 electronic or written comments by February 9, 2009, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by February 13, 2009.

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 Barbara Pettoni, Office of Associate Chief Counsel (Procedure and Administration).

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6050P-0 is amended as follows:

1. The introductory text is revised.

2. The entries in §1.6050P-1(b)(2)(v) and (h)(1) are revised.

3. The entry for §1.6050P-1T is removed.

The revisions read as follows:

§1.6050P-0 Table of contents.—This section lists the major captions that appear in §1.6050P-1 and §1.6050P-2.

* * * * *

§1.6050P-1 Information reporting for discharges of indebtedness by certain entities.

* * * * *

(b) * * *

(2) * * *

(v) [The text of the proposed entry for §1.6050P-1(b)(2)(v) is the same as the text in §1.6050P-1T(b)(2)(v) in §1.6050P-0 published elsewhere in this issue of the Bulletin].

* * * * *

(h) * * *

(1) [The text of the proposed entry for §1.6050P-1(h)(1) is the same as the text of §1.6050P-1T(h)(1) in §1.6050P-0 published elsewhere in this issue of the Bulletin].

Par. 3. Section 1.6050P-1 is amended by revising paragraphs (b)(2)(i)(H), (b)(2)(v) and (h)(1) to read as follows:

§1.6050P-1 Information reporting for discharges of indebtedness by certain entities.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(H) [The text of the proposed amendments to §1.6050P-1(b)(2)(i)(H) is the same as the text of §1.6050P-1T(b)(2)(i)(H) published elsewhere in this issue of the Bulletin].

* * * * *

(v) [The text of the proposed amendments to §1.6050P-1(b)(2)(v) is the same as the text of §1.6050P-1T(b)(2)(v) published elsewhere in this issue of the Bulletin].

* * * * *

(h)(1) [The text of the proposed amendments to §1.6050P-1(h) is the same as the text of §1.6050P-1T(h) published elsewhere in this issue of the Bulletin].

* * * * *

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

(Filed by the Office of the Federal Register on November 7, 2008, 8:45 a.m., and published in the issue of the Federal Register for November 10, 2008, 73 F.R. 66568)

Fast Track Settlement For TE/GE Taxpayers

Announcement 2008-105

DESCRIPTION OF TE/GE FAST TRACK SETTLEMENT

This announcement provides an opportunity for entities with issues under examination by the Tax Exempt and Governmental Entities Division (TE/GE) to use Fast Track Settlement (FTS) to expedite case resolution. The TE/GE FTS will enable TE/GE entities that currently have unagreed issues in at least one open period under examination to work together with TE/GE and the Office of Appeals (Appeals) to resolve outstanding disputed issues while the case is still in TE/GE jurisdiction. TE/GE and Appeals will jointly administer the TE/GE FTS process. TE/GE FTS will be used to resolve factual and legal issues, and it may be initiated at any time after an issue has been fully developed, but before the issuance of a 30-day letter (or its equivalent). TE/GE FTS will be available to taxpayers for a pilot period of up to two years, beginning upon the date of publication of this

announcement. Upon completion of the two-year pilot period, TE/GE and Appeals will evaluate the program, consider necessary adjustments, and determine whether to make the program permanent.

RELIANCE ON AND DIFFERENCES FROM LMSB AND SB/SE FAST TRACK SETTLEMENT

The procedures for using TE/GE FTS rely on the provisions of Revenue Procedure 2003-40, 2003-1 C.B. 1044, and Announcement 2006-61, 2006-2 C.B. 390, which implement Large and Mid-Size Business (LMSB) and Small Business/Self-Employed (SB/SE) Taxpayer FTS Dispute Resolution Programs, respectively.

TE/GE FTS, during the two-year pilot period, extends the provisions of the LMSB and SB/SE FTS programs to TE/GE cases and provides for direct oversight of the program by TE/GE and Appeals. TE/GE FTS therefore involves procedures almost identical to the LMSB and SB/SE FTS procedures described in Rev. Proc. 2003-40 and Ann. 2006-61. The key differences between the LMSB, SB/SE and TE/GE FTS procedures are as follows:

- The TE/GE Group Manager or designee fulfills the duties of the LMSB Team Manager or SB/SE Group Manager;
- The Appeals FTS Program Manager, after consultation with the TE/GE Group Manager, selects and manages cases eligible for TE/GE FTS. The Appeals Team Manager responsible for TE/GE Programs serves as the FTS Program Manager; and
- The TE/GE FTS process is designed to be completed within 60 days of acceptance of the TE/GE FTS Application. The process can be extended beyond the 60-day period if agreed to by all parties.

CASE ELIGIBILITY AND EXCLUSIONS

Generally, TE/GE FTS is available for cases involving: income tax, exclusion of income from interest paid on municipal obligations, employment tax, estate and gift tax, excise tax, and exemption,

foundation or qualification issues or other such TE/GE functional issues as appropriate when:

- Issues are fully developed;
- The taxpayer has stated a position in writing; and
- There are a limited number of unagreed issues.

TE/GE FTS will *not* be available for:

- Issues that can be resolved through other established settlement initiatives, such as, but not limited to, the Self Correction Program “SCP”, the Audit Closing Agreement Program “Audit CAP”, or other programs described in Rev. Proc. 2006–27, 2006–1 C.B. 945;
- Correspondence examination cases;
- Cases in which the taxpayer has failed to respond to IRS communications and no documentation has been previously submitted for consideration by TE/GE;
- Cases in which Appeals does not have jurisdiction (including determination of penalties under § 6700 of the Code);
- Listed Abusive Tax Avoidance Transactions (ATAT);
- Cases involving potential for civil or criminal fraud;
- Rebate claim cases;
- Selected initiatives as determined on an annual basis by the TE/GE Commissioner or his delegate;
- Tax Equity & Fiscal Responsibility Act (TEFRA) partnership cases;
- Issues designated for litigation;
- Issues under consideration for designation for litigation;
- Frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2008–2, 2008–1 I.R.B. 90, or any successor guidance;
- “Whipsaw” issues, *i.e.*, issues for which resolution with respect to one party might result in inconsistent treatment in the absence of the participation of another party; or
- Issues that have been identified in a Chief Counsel Notice, or equivalent publication, as excluded from the FTS process.

If an issue is determined not to be eligible for the FTS program, all issues in the case are not eligible for the FTS program. Additionally, the Appeals FTS Pro-

gram Manager will determine whether Appeals has the necessary staffing resources before accepting the case into the program.

TE/GE FTS will not be the appropriate dispute resolution process for all cases involving TE/GE taxpayers. The TE/GE Group Manager or designee and the taxpayer will evaluate their individual circumstances of their case to determine if this process meets their needs.

APPLICATION PROCESS

A taxpayer that is interested in participating in TE/GE FTS, or that has questions about the program and its suitability for the taxpayer’s case, may contact the TE/GE Group Manager of the Examining Agent conducting the audit for the period(s) currently under examination. Either the taxpayer, Examining Agent or the TE/GE Group Manager may initiate an application to the TE/GE FTS process at any time after an issue has been fully developed but before a 30-day letter (or its equivalent) is issued.

A FTS Application, attached as Exhibit 1, should be submitted. A Form 5701, (*Notice of Proposed Adjustment*) or a Revenue Agent Report will be prepared by the TE/GE Examining Agent. To facilitate the understanding of the parties’ opposing views, a written response from the taxpayer must be included with the FTS Application.

If the case is not accepted for inclusion in TE/GE FTS, the TE/GE or Appeals representative will discuss other dispute resolution opportunities with the taxpayer, including 30-day letter procedures contained in IRS Publications 1, *Your Rights As A Taxpayer*, or 5, *Your Appeal Rights and How To Prepare a Protest If You Don’t Agree*. The decision not to accept a case into the TE/GE FTS program is not subject to administrative appeal or judicial review.

SETTLEMENT PROCESS

TE/GE FTS employs various alternative dispute resolution techniques to promote agreement. An FTS Appeals Official will serve as a neutral party. The FTS Appeals Official will not perform in a traditional Appeals role, but will use dispute resolution techniques to facilitate settlement between the parties. A TE/GE Appeals Officer trained in mediation or, in

limited cases, a mediation-trained Appeals Team Case Leader, will serve as the neutral FTS Appeals Official.

During TE/GE FTS, the taxpayer (or taxpayer’s authorized representative) and TE/GE representatives, including at least one representative with decision-making authority from both TE/GE and the taxpayer, will meet with the FTS Appeals Official. Any person engaged in practice before the IRS must have a power of attorney from the taxpayer (Form 2848, *Power of Attorney and Declaration of Representative*). The taxpayer and TE/GE representatives should include individuals with the information and expertise necessary to assist the parties and the FTS Appeals Official during the settlement process. The FTS Appeals Official may ask the parties to limit the number of participants to facilitate the process.

The FTS Appeals Official will hold the FTS session at the date and location agreed to by both parties. Prior to the FTS session, the FTS Appeals Official will advise the participants of the procedures and establish ground rules. The FTS Appeals Official may modify the rules and procedures during the session to adapt to changes in circumstances. The FTS session may include joint sessions with all parties, separate meetings, or both as determined appropriate in the sole judgment of the FTS Appeals Official.

The FTS Appeals Official will use a FTS Session Report to assist in planning the FTS session and to report on developments during the session. The FTS Session Report will include a list of all issues approved for the FTS program, a description of the issues, the amounts in dispute, conference dates, a plan of action for the FTS session and other information useful to the process as determined by the parties and the FTS Appeals Official. The FTS Appeals Official also will prepare and update an Agenda to guide the communication, set the order of issue discussion, and pose questions to clarify the issues. During the session, the FTS Appeals Official will provide decision makers from both parties with copies of the Agenda and the FTS Session Report.

Generally, the FTS Appeals Official will consider only those issues outlined in the FTS Session Report, except by mutual agreement of the parties. If the taxpayer presents information during the session

that the taxpayer had not previously presented during the audit, the FTS Appeals Official will adjust the targeted completion date to give the appropriate IRS officials time to evaluate the information.

During the session, the FTS Appeals Official may propose settlement terms for any or all issues. If the taxpayer accepts the FTS Appeals Official's settlement proposal, but the TE/GE Group Manager rejects it, the TE/GE Area Manager or equivalent TE/GE management official with jurisdiction for the case must review the rejection of the settlement proposal and either concur in writing with the rejection or accept the settlement proposal on behalf of TE/GE. If the TE/GE Area Manager or equivalent TE/GE management official concurs with the Group Manager's rejection of the settlement proposal, and an acceptable alternative settlement cannot be reached, the issue will be closed out of the FTS program as unagreed.

If the parties resolve any of the disputed issues at the conclusion of the session, the parties and the FTS Appeals Official shall sign the FTS Session Report acknowledging acceptance of the terms of settlement for purposes of preparing computations. The signature of the parties on the FTS Session Report does not constitute a final settlement, nor does it waive restrictions on assessment, terminate consents to extend periods of limitation, start the running of any periods of limitation, or constitute agreement to close the case. Post-settlement procedures are described below.

The TE/GE FTS process is confidential. IRS employees involved in any way with the TE/GE FTS process are subject to the confidentiality and disclosure provisions of the Internal Revenue Code. By signing the FTS Agreement, attached as Exhibit 1, the taxpayer consents, pursuant to section 6103(c), to the disclosure of the taxpayer's returns and return information pertaining to the issues being considered in the TE/GE FTS process to those persons named on the Agreement as participants in the process. IRS employees, the taxpayer and persons invited to participate by the IRS or the taxpayer shall not voluntarily disclose information regarding any communication made during the TE/GE FTS session, except as provided by statute.

The prohibition against *ex parte* communications between Appeals Officers and other IRS employees provided by § 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 does not apply to the communications arising in the TE/GE FTS process because the Appeals personnel are facilitating an agreement between the taxpayer and TE/GE and are not acting in their traditional Appeals settlement role.

Any recommended settlement by the FTS Appeals Official of an issue in FTS shall be subject to the procedures including procedures in the Internal Revenue Manual and existing published guidance, which would be applicable if the issue was being considered by Appeals. FTS therefore creates no special authority for settlement by the FTS Appeals Official. For example, if the FTS issue is coordinated in either the Technical Advisor Program or the Appeals Technical Guidance program, the proposed settlement of that issue is subject to established procedures, including submission of the proposed settlement to the Appeals Coordinator for review and concurrence.

If the parties fail to resolve any issue in FTS, the taxpayer retains the option of requesting that the issue be heard through the traditional Appeals process.

Except as specifically provided above, both parties retain the right to withdraw throughout the entire TE/GE FTS process. A party wishing to withdraw should provide written notice to the FTS Appeals Official and the other party.

POST-SETTLEMENT PROCEDURE

If the parties reach an agreement on all or some issues through the TE/GE FTS process, the TE/GE or Appeals FTS Official, as appropriate, will use established issue or case closing procedures and applicable agreement forms, including preparation of a Form 906, *Closing Agreement On Final Determination Covering Specific Matters*, if appropriate.

If applicable, the IRS will report a proposed resolution reached as a result of TE/GE FTS to the Joint Committee on Taxation in accordance with section 6405. The IRS may reconsider a proposed settlement, as reflected in a signed FTS Session Report, upon receipt of comments

on the proposed settlement from the Joint Committee on Taxation. If the taxpayer declines to agree with any changes by the IRS upon reconsideration, TE/GE will close the case unagreed, and the taxpayer will retain all the usual rights to request Appeals consideration of any unagreed issues.

UNRESOLVED CASES

With respect to TE/GE FTS cases that are returned for traditional Appeals consideration for any reason, *ex parte* restrictions will not be imposed on intra-Appeals communications. Appeals management will take appropriate measures to ensure these cases are handled impartially.

PRECEDENTIAL VALUE OF SETTLEMENT AGREEMENTS

A resolution reached by the parties through the TE/GE FTS process will not bind the parties for taxable periods or issues not covered by the TE/GE FTS agreement, unless such taxable periods or issues are addressed expressly in a closing agreement reached as part of the TE/GE FTS process.

DELEGATION OF AUTHORITY

This announcement constitutes a delegation by the Commissioner of Internal Revenue of settlement authority to Grade 14, 13 and 12 Appeals Officers who are assigned to be Appeals FTS Officials for TE/GE FTS cases described in this announcement. This delegation of settlement authority includes the responsibility for arriving at the final disposition from the Government's perspective, approving the final settlement in accordance with the delegated authority, and executing the appropriate closing documents. This authority may not be redelegated.

EFFECTIVE DATE

TE/GE FTS is effective upon publication of this announcement in the Internal Revenue Bulletin.

COMMENTS

The IRS invites interested persons to comment on this program. Send submissions to:

Internal Revenue Service-Appeals
Attn: Leonard C. Horton
4050 Alpha Road
Farmers Branch, TX 75244-4201
Leonard.C.Horton@irs.gov

FURTHER INFORMATION

For further information regarding this announcement, contact either: Charles F. Fisher, TE/GE Team Leader, at (302) 286-1510 (not a toll-free

number), *Charles.F.Fisher@irs.gov* or Leonard C. Horton, Appeals Program Analyst, Tax Policy & Procedure (Alternative Dispute Resolution) at (972) 308-7330 (not a toll-free number), *Leonard.C.Horton@irs.gov*.

Application for Fast Track Settlement

Submitted to Appeals: Date _____ Location _____	From: <input type="checkbox"/> LM/SB <input type="checkbox"/> SB/SE <input type="checkbox"/> TE/GE <input type="checkbox"/> Other _____	Type of Tax
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Taxpayer Name			Representative Name (If Applicable)		
Taxpayer TIN/EIN		Tax Years	Name of Firm		
Address			Address		
City	State	Zip	City	State	Zip
Telephone	Fax		Telephone	Fax	

Examination Group / Team Manager				Source (FE/OE/CO, etc)	
City	State	Zip	Telephone	Fax	

Other Participants (if Applicable)		
Name	Position or Affiliation	Phone

Signatures

The undersigned request Appeals assistance in the Fast Track Settlement (FTS) process. The issues for which this assistance is requested are described in the Form(s) 5701, Summary of Issues or Examination Re-Engineering Lead Sheets or similar documents and the taxpayer's written response, and are attached to this application. By signing this application, taxpayer consents, pursuant to section 6103(c) of the Code, to the disclosure of the taxpayer's returns and return information pertaining to the issues being considered in the FTS process to those persons named on the application as participants in the process. The prohibition against ex parte communications between Appeals personnel and other Service employees provided by section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 does not apply to the communications arising in FTS because Appeals personnel, in facilitating an agreement between the taxpayer and the other Service Operating Division, are not acting in their traditional Appeals settlement role. IRS employees, taxpayer and persons invited to participate by the IRS or taxpayer will not voluntarily disclose information regarding any communication made during the FTS session, except as provided by statute.

Taxpayer Signature	Date signed
Taxpayer Spouse's Signature (If related to a joint return)	Date signed
Taxpayer(s) Representative Signature	Date signed
IRS Group / Team Manager Signature	Date signed
Approving Operating Division Official (Signature and Title)	Date signed
Accepted By Appeals Official (Appeals Team Manager Signature)	Date signed
Accepted By Appeals Official (Appeals Program Manager Signature)	Date signed

Internal Use Only

Industry (IC)
 Coordinated Industry Case (CIC)
 Other _____
 Potential Joint Committee Yes No
 Industry: NR; HMT; RFPH; CTM; FS
 MFT: _____
 PBC: _____
 Listed Transaction Yes No
 Preferred Conference Site _____
 Fast Track End Date _____

Extension of Fast Track Settlement For SB/SE Taxpayers Pilot Program

Announcement 2008-110

SUMMARY AND BACKGROUND

This announcement extends the test of the Fast Track Settlement for Small Business/Self-Employed division (SB/SE) Taxpayers Pilot Program set forth in Announcement 2006-61, 2006-2 C.B. 390, for an additional two-year period, beginning on December 1, 2008, the date this announcement is published in the Internal Revenue Bulletin.

SB/SE and the Office of Appeals (Appeals) concluded a two-year test of the Fast Track Settlement for SB/SE Taxpayers Pilot Program on September 4, 2008. During the additional two-year test period, SB/SE and Appeals will seek additional cases for fast track settlement in the same seven cities designated in Ann. 2006-61 and IR 2007-200, to further evaluate the program. The extended program will contain no changes from the provisions set forth in Ann. 2006-61.

This procedure allows taxpayers with eligible cases, as listed in Ann. 2006-61, under examination by SB/SE to request fast track settlement. Using the services of a trained mediator from Appeals, the taxpayer and SB/SE will attempt to resolve unagreed issues on an expedited basis. The fast track settlement program is consistent with the Internal Revenue Service's efforts to improve tax administration, provide customer service, and reduce taxpayer burden.

EFFECTIVE DATE

This program is effective beginning December 1, 2008, the date it is published in the Internal Revenue Bulletin, and applications to the program will be accepted through November 30, 2010.

COMMENTS

The Service invites interested persons to comment on this pilot program. Written comments should be delivered or mailed by January 15, 2009, to:

Internal Revenue Service — Appeals
Attn: Nancy J. Talajkowski
160 Spears Street, Suite 800
San Francisco, CA 94105

Alternatively, comments may be submitted by e-mail to the following address: notice.comments@irs.counsel.treas.gov.

FURTHER INFORMATION

For further information regarding this announcement, contact either: Xavier Guerrero, SB/SE Program Analyst, at (415) 552-6195 (not a toll-free number); or Nancy J. Talajkowski, Appeals Program Analyst, Tax Policy & Procedure (Alternative Dispute Resolution) at (415) 227-5007 (not a toll-free number).

Test of Procedures for Mediation and Arbitration for Offer in Compromise and Trust Fund Recovery Penalty Cases in Appeals

Announcement 2008-111

SECTION 1. PURPOSE

Section 7123 requires the Internal Revenue Service to prescribe procedures by which a taxpayer or the Office of Appeals may request non-binding mediation on any issue unresolved at the conclusion of Appeals procedures, or unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122. Section 7123 also requires the Internal Revenue Service to establish a pilot program by which a taxpayer and the Office of Appeals may jointly request binding arbitration for any issue unresolved under the same circumstances. This announcement modifies Revenue Procedure 2002-44, 2002-2 C.B. 10, and Revenue Procedure 2006-44, 2006-2 C.B. 800, by establishing a two-year test of the mediation and arbitration procedures for Offer in Compromise (OIC) and Trust Fund Recovery Penalty (TFRP) cases that are under the jurisdiction of the Office of Appeals.

SECTION 2. DESCRIPTION

Alternative dispute resolution (ADR) programs are consistent with the IRS's ef-

forts to improve tax administration and enhance customer service. Appeals will seek appropriate OIC and TFRP cases for both mediation and arbitration during the two-year test period in order to evaluate the effectiveness of alternative dispute resolution for such cases.

During the two-year test period, effective from the date of publication of this announcement, Appeals will initially offer mediation and arbitration for OIC and TFRP cases for taxpayers whose appeals are considered at an Appeals office located in one of the following cities:

- Atlanta, Georgia
- Chicago, Illinois
- Cincinnati, Ohio
- Houston, Texas
- Indianapolis, Indiana
- Louisville, Kentucky
- Phoenix, Arizona
- San Francisco, California

Appeals may expand the availability of this program to other locations during the two-year test period. Upon completion of the two-year test period, Appeals will evaluate this program, consider necessary adjustments to both the mediation and arbitration components of the program, and determine whether to make the arbitration component permanent.

SECTION 3. GENERAL SCOPE OF MEDIATION AND ARBITRATION PROCEDURES

01. The general provisions set forth in Revenue Procedures 2002-44 and 2006-44 apply to the mediation and arbitration, respectively, of OIC and TFRP cases under this two-year pilot program except as specifically stated herein. In accordance with Revenue Procedure 2006-44, arbitration is not available for legal issues.

02. The mediation and arbitration procedures do not create any special authority for settlement by Appeals. During the mediation and arbitration processes, Appeals is still subject to the procedures that would apply if the issue were being considered via the standard Appeals process, including procedures in the Internal Revenue Manual (IRM), found at <http://www.irs.gov/irm/index.html>, and other administrative guidance.

03. The overall determination whether a taxpayer was required to collect, truthfully account for, and pay over income, employment or excise taxes, and/or whether a taxpayer willfully failed to collect or truthfully account for and pay over such tax or willfully attempted in any manner to evade or defeat the payment of such tax are legal issues for which arbitration is not available. These legal issues, however, are based on factual components that are eligible for arbitration.

04. The overall determination whether a taxpayer's offer is acceptable under section 7122 may only be made by the Secretary or his delegate and is not a matter for arbitration. See section 7122(a) (giving the Secretary the discretionary authority to compromise tax liabilities) and Delegation Order 5-1 (delegating that discretionary authority to Appeals). Factual determinations are generally required as part of making the overall offer acceptability determination, however, and these individual factual determinations are eligible for arbitration.

05. The Appeals Area Director must approve the acceptance of all cases for mediation or arbitration.

SECTION 4. SCOPE OF MEDIATION AND ARBITRATION FOR OIC CASES

01. In addition to the exclusions contained in Revenue Procedure 2002-44 and Revenue Procedure 2006-44, the following limitations on OIC cases apply:

(1) Neither mediation nor arbitration is available for:

- i. Cases in which the taxpayer has the ability to pay in full based on the unadjusted financial information submitted by the taxpayer, except when economic hardship exists;
- ii. Cases in which the taxpayer declines to amend or increase the offer without stating any specific disagreement with the valuations, figures, or methodology used by Appeals in determining reasonable collection potential;
- iii. Cases in which the disputed issue is explicitly addressed in established guidance (for example, the issues addressed in the instructions for Form 656, "Offer in Compromise," such as unsecured debt, college expenses, and non-qualifying charitable contributions);

- iv. Cases in which an OIC is submitted as an alternative to collection in a Collection Due Process or equivalent hearing case;
- v. Cases in which the issue of liability was previously determined by Appeals; or
- vi. Cases in which Delegation Order 5-1 requires a level of approval higher than that of the Appeals Team Manager, such as Effective Tax Administration offers or those in which a determination is made by Appeals that acceptance is not in the best interest of the government (see Policy Statement P-5-100 and IRM 5.8.7.6(6)).

(2) Mediation is not available for:

- i. Cases in which the taxpayer has already attempted to resolve the matter through Fast Track Mediation.

(3) Arbitration is not available for:

- i. Corporate OIC cases in which the issue to be arbitrated is whether an individual is responsible for a Trust Fund Recovery Penalty or Personal Liability for Excise Tax assessment; or
- ii. Doubt as to liability cases.

02. Provided all facts are known by both parties, appropriate issues for mediation or arbitration in OIC cases generally include:

(1) The value of assets, including those held by a third party;

(2) The value of dissipated assets and what amount should be included in the overall determination of reasonable collection potential;

(3) A taxpayer's proportionate interest in jointly held assets;

(4) Projections of future income based on calculations other than current income;

(5) The calculation of a taxpayer's future ability to pay when living expenses are shared with a non-liable person; and

(6) Other factual determinations, such as whether a taxpayer's contributions into a retirement savings account are discretionary or mandatory as a condition of employment.

03. Additionally, provided all facts are known by both parties, appropriate issues for mediation in OIC cases generally include whether the taxpayer meets the crite-

ria for deviating from national and/or local expense standards.

04. For cases with liabilities of \$50,000 or more, any settlement or agreement reached through mediation or arbitration must be reviewed by the Office of Chief Counsel pursuant to section 7122(b) before being finalized. When review is required, Appeals will forward the case to Area Counsel for an opinion concerning whether the case is subject to compromise. See IRM sections 5.8.8.5 and 8.23.4.2.2.

SECTION 5. SCOPE OF MEDIATION AND ARBITRATION FOR TFRP CASES

01. Appropriate issues for mediation in TFRP cases generally include:

(1) Whether a person was required to collect, truthfully account for, and pay over income, employment, or excise taxes;

(2) Whether a responsible person willfully failed to collect or truthfully account for and pay over such tax, or willfully attempted in any manner to evade or defeat the payment of such tax;

(3) Whether a taxpayer sufficiently designated a payment to the trust fund portion of the unpaid tax; and

(4) Whether the taxpayer provided sufficient corporate payroll records to establish that a corporate tax deposit was in the amount required by Treas. Reg. § 31.6302-1(c) and therefore was considered a designated payment to be applied to both the trust fund and non-trust fund portions of the employment taxes associated with that specific payroll. See the Note to IRM 5.7.4.3(7).

02. Appropriate issues for arbitration in TFRP cases generally include:

(1) Specific factual determinations concerning whether a person was required to collect, account for, and pay over income, employment, or excise taxes. Common factors include whether the taxpayer:

- a. was an officer, director, or shareholder of the corporation;
- b. had the authority to sign checks;
- c. exercised significant control over the corporation's financial affairs;
- d. had the authority to determine which creditors would be paid;
- e. was involved in payroll disbursements;
- f. had control over the voting stock of the corporation;

- g. was involved in making federal tax deposits; and
- h. had the ability to hire and fire employees.

(2) Specific factual determinations concerning whether a responsible person willfully failed to collect or truthfully account for and pay over such tax, or willfully attempted in any manner to evade or defeat the payment of such tax. Common factors to be determined include:

- a. when the taxpayer became aware of the failure to pay over the withheld tax;
- b. whether the taxpayer had knowledge of payments to other creditors, including employees, after becoming aware of the failure to pay over the withheld tax;
- c. whether there were unencumbered funds available to satisfy pre-existing employment tax liabilities; and
- d. whether the taxpayer failed to use unencumbered funds to satisfy pre-existing tax liabilities after becoming aware of such liabilities.

(3) A factual determination of the amount designated by the taxpayer as a payment to the trust fund portion of the unpaid tax; and

(4) A factual determination whether the taxpayer provided sufficient corporate payroll records to establish that a corporate tax deposit was in the amount required by Treas. Reg. § 31.6302-1(c) and therefore was considered a designated payment to be applied to both the trust fund and non-trust fund portions of the employment taxes associated with that specific payroll. See Note to IRM 5.7.4.3(7).

SECTION 6. APPLICATION PROCESS

01. Either the taxpayer or Appeals may submit a request to mediate or arbitrate after consulting with and obtaining the concurrence of the other party.

02. A taxpayer may submit a request to mediate or arbitrate by sending a written request to the appropriate Appeals Team Manager and a copy to:

Chief of Appeals
Attn: Tax Policy & Procedure —
Collection & Processing
1099 14th St. NW, Suite 4200 East
Washington, DC 20005

03. For an OIC case, the written request to mediate or arbitrate should include:

- a. The taxpayer's name, address, and taxpayer identification number, and the name, title, address, and telephone number of the person to contact;
- b. The name of the Appeals Team Manager, Appeals Officer, or Settlement Officer;
- c. The taxable periods involved;
- d. A detailed description of the issue(s) for which the taxpayer is requesting mediation or arbitration, including both the specific dollar amount and the basis by which that amount was determined; and
- e. A representation that the disputed issue is not an excluded issue listed in section 4.01 above or in Revenue Procedure 2002-44 or Revenue Procedure 2006-44.

04. For a TFRP case, the written request to mediate or arbitrate should contain items a through e in section 6.03 above and a detailed explanation of the taxpayer's position, including explanations of the following (where applicable):

- a. Why the taxpayer was not required to collect, truthfully account for, and pay over the income, employment or excise taxes;
- b. Why the taxpayer did not willfully fail to collect or truthfully account for and pay over such tax, or willfully attempt in any manner to evade or defeat the payment of such tax; and
- c. Why the computation of the Trust Fund Recovery Penalty should reflect payment(s) designated specifically to the trust fund portion of the unpaid tax.

05. If the taxpayer wants to use a non-IRS co-mediator (at the taxpayer's expense) or a non-IRS arbitrator (expense shared equally by the taxpayer and Appeals), the application should state this preference.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 2002-44 and Revenue Procedure 2006-44 are modified.

SECTION 8. EFFECTIVE DATE

The procedures in this announcement are effective December 1, 2008.

SECTION 9. CONTACT INFORMATION

The principal authors of this announcement are Dale Veer, Appeals, Tax Policy and Procedure (Collection & Processing), and Sarah Sheldon, Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this announcement, contact Dale Veer at (651) 726-7430 or Sarah Sheldon at (202) 622-7950 (not toll-free calls).

Unified Rule for Loss on Subsidiary Stock; Correction

Announcement 2008-114

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (T.D. 9424, 2008-44 I.R.B. 1012) that were published in the **Federal Register** on Wednesday, September 17, 2008 (73 FR 53934) under sections 358, 362(e)(2), and 1502 of the Internal Revenue Code. The final regulations apply to corporations filing consolidated returns, and corporations that enter into certain tax-free reorganizations. The final regulations provide rules for determining the tax consequences of a member's transfer (including by deconsolidation and worthlessness) of loss shares of subsidiary stock. In addition, the final regulations provide that section 362(e)(2) generally does not apply to transactions between members of a consolidated group. Finally, the final regulations conform or clarify various provisions of the consolidated return regulations, including those relating to adjustments to subsidiary stock basis.

EFFECTIVE DATE: This correction is effective October 20, 2008, and is applicable on September 17, 2008.

FOR FURTHER INFORMATION CONTACT: Marcie P. Barese, (202) 622-7790, Sean P. Duffley,

(202) 622-7770, or Theresa Abell (202) 622-7700 (none of the numbers are toll-free).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subjects of this document are under sections 337, 358, 362, 1502 of the Internal Revenue Code.

Need for Correction

As published, final regulations (T.D. 9424) contain errors that may prove to be misleading and are in need of clarification.

* * * * *

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

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 1.358-6(f)(3) is amended by revising the last sentence to read as follows:

§1.358-6 Stock basis in certain triangular reorganizations.

* * * * *

(f) * * *

(3) * * * However, taxpayers may apply paragraph (b)(2)(v) of this section to triangular reorganizations occurring before September 17, 2008 and on or after December 23, 1994.

Par. 3. Section 1.1502-13(l)(1) is amended by revising the last sentence to read as follows:

§1.1502-13 Intercompany transactions.

* * * * *

(l) * * *

(1) * * * However, taxpayers may apply paragraph (j)(5)(i)(A) of this section to transactions that occurred prior to September 17, 2008.

* * * * *

Par. 4. Section 1.1502-19(h)(1) is amended by revising the second sentence to read as follows:

§1.1502-19 Excess loss accounts.

* * * * *

(h) * * *

(1) * * * However, taxpayers may apply paragraph (c)(3)(i)(A) of this section to transactions that occurred prior to September 17, 2008.

* * * * *

Par. 5. Section 1.1502-33(j)(1) is amended by revising the last sentence to read as follows:

§1.1502-33 Earnings and profits.

* * * * *

(j) * * *

(1) * * * However, taxpayers may apply paragraph (e)(2)(i)(A) of this section with respect to determinations of the earnings and profits of a member in consolidated return years beginning prior to September 17, 2008.

* * * * *

Par. 6. Section 1.1502-36 is amended by revising the last sentence of the paragraph (b)(3) *Example 3*.(i)(D); the fourth sentence of the paragraph (c)(8) *Example 6*.(iii)(A); the only sentence of the paragraph (d)(3)(i)(B); the third through fifth sentences of the paragraph (d)(5)(ii); the third sentence of the paragraph (d)(8) *Example 6*.(ii)(B); the second sentence of the paragraph (d)(8) *Example 6*.(ii)(D)(3); the fifth sentence of the paragraph (d)(8) *Example 8*.(i)(F); the first sentence of the paragraph (d)(8) *Example 8*.(ii)(E); the first sentence of the paragraph (d)(8) *Example 8*.(ii)(F); the first sentence of the paragraph (d)(8) *Example 9*.(ii); the second sentence of the paragraph (g)(2) *Example 5*.(i); and the third sentence of the paragraph (g)(2) *Example 5*.(iii) to read as follows:

§1.1502-36 Unified loss rule.

* * * * *

(b) * * *

(3) * * *

Example 3. * * *

(i) * * *

(D) * * * The results would be the same if, in addition to the facts in paragraph

(i)(A) of this *Example 3*, M transferred its S share to X in a fully taxable transaction and, as permitted under paragraph (b)(1)(ii)(B) of this section, P elected to re-determine basis under this paragraph (b).

* * * * *

(c) * * *

(8) * * *

Example 6. * * *

(iii) * * *

(A) * * * After taking into account the effects of all applicable rules of law, M's basis in the S share at the end of year 5 is \$100 (M's original \$100 basis decreased under §1.1502-32 by \$40 at the end of the year 1 and then increased under §1.1502-32 by \$40 at end of the year 5 (the net of the \$100 tax exempt income from the excluded COD applied to reduce attributes and the \$60 noncapital, non-deductible expense from the reduction of S's portion of the CNOL)). * * *

* * * * *

(d) * * *

(3) * * *

(i) * * *

(B) S's aggregate inside loss (as defined in paragraph (d)(3)(iii) of this section).

* * * * *

(5) * * *

(ii) * * * S's attribute reduction amount is allocated proportionately (by basis) between (among) the non-stock Category D asset and S's deemed single share(s) of subsidiary stock. (See paragraphs (d)(4)(ii)(B)(2) and (d)(4)(ii)(C) of this section regarding the portion of S's attribute reduction amount allocated to the Category D assets other than lower-tier subsidiary stock.) For allocation purposes, S's basis in each deemed single share of S1 stock is its deemed basis (determined under paragraphs (d)(5)(i)(B) and (d)(5)(i)(C) of this section), reduced by—

* * * * *

(8) * * *

Example 6. * * *

(ii) * * *

(B) * * * However, S's gain recognized on the transfer of Share E is computed and immediately adjusts members' bases in subsidiary stock under §1.1502-32 (because M and S are not members of the same group immediately after the transaction, the sale is not an intercompany transaction subject to §1.1502-13).

* * * * *

(D) * * *

(3) * * * See paragraph (d)(5)(v)(A) of this section.

* * * * *

Example 8. * * *

(F) * * * Under §1.1502-32(c)(1)(ii)(A)(J) this \$90 expense is allocated to the transferred loss shares of S stock in proportion to the loss in the shares, or \$.90 per share.

* * * * *

(ii) * * *

(E) * * * The facts are the same as in paragraph (ii)(A) of this *Example 8*, except that P elects under paragraph (d)(6) of this section to reduce M's basis in the S shares by the full attribute reduction amount of \$22, in lieu of S reducing its attributes.* * *

(F) * * * The facts are the same as in paragraph (ii)(A) of this *Example 8*.

Example 9. * * *

(ii) * * * However, S1's gain recognized on the transfer of the S2 share is computed and immediately adjusts members' bases in subsidiary stock under §1.1502-32.

* * * * *

(g) * * *

(2) * * *

Example 5. * * *

(i) * * * S owns Asset 1 with a basis of \$100 and a value of \$20.* * *

(iii) * * * However, because all the shares are transferred, the group's income is clearly reflected.

* * * * *

LaNita Van Dyke,
Chief, Publications and
Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).

(Filed by the Office of the Federal Register on October 17, 2008, 8:45 a.m., and published in the issue of the Federal Register for October 20, 2008, 73 F.R. 62204)

Infrastructure Improvements Under Section 897

Announcement 2008-115

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: This document describes issues that the IRS and the Treasury Department are considering addressing, in a notice of proposed rulemaking (REG-130342-08), under section 897 of the Internal Revenue Code (Code) regarding the definition of an interest in real property. The notice of proposed rulemaking would address certain rights granted by a governmental unit that are related to the lease, ownership, or use of real property. This document also invites comments from the public regarding these contemplated rules. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be submitted by January 29, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-130342-08), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-130342-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS and REG-130342-08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposals, Jeffrey P. Cowan at (202) 622-3850; concerning submissions, Richard A. Hurst at (202) 622-7180 (TDD Telephone) (not toll-free numbers) and his e-mail address is Richard.A.Hurst@irscounsel.treas.gov.

SUPPLEMENTARY INFORMATION:

Overview

This document describes issues that the IRS and the Treasury Department are considering addressing, in a notice of proposed rulemaking, regarding the definition of an interest in real property within the meaning of section 897(c) of the Code. The notice of proposed rulemaking would address certain rights granted by a governmental unit that are related to the

lease, ownership, or use of toll roads, toll bridges, and certain other physical infrastructure. The proposed regulations would amend the § 1.897-1 regulations.

Transactions at Issue

In a typical transaction at issue, a domestic partnership (DP) leases or purchases from an unrelated party infrastructure assets and any land underlying these infrastructure assets (together, specified infrastructure) within the United States. The DP's partners include domestic corporations with foreign shareholders. Examples of specified infrastructure include a toll road or toll bridge.

Often, as a condition to operating the specified infrastructure and to collecting tolls for its use, DP is also required to obtain a governmental license, permit, franchise, or other similar right (governmental permit). The DP may also own or acquire property that would be used in the trade or business of operating the specified infrastructure, such as signs, snow plows, and electronic sensors.

The physical attributes of the specified infrastructure, for example, a relatively narrow roadway, and terms and conditions related to the specified infrastructure, for example, that the lessee is required to maintain and operate a roadway, mean that in many cases there may practically be no potential alternative commercial uses for the specified infrastructure. In those cases, the value of the leasehold interest in the specified infrastructure derives from the right to charge and collect tolls.

Background

Section 897(a)(1) of the Code treats the gain or loss of a nonresident alien or foreign corporation from the disposition of a U.S. real property interest (USRPI) as if the taxpayer were engaged in a trade or business in the United States, and as if such gain or loss were effectively connected with such trade or business under sections 871(b) or 882. In general, a USRPI includes an interest in real property located in the United States or the Virgin Islands, and any interest (other than an interest solely as a creditor) in a domestic corporation unless the taxpayer establishes that the corporation was at no time a U.S. real property holding

corporation (USRPHC) within the period described in section 897(c)(1)(A)(ii). Section 897(c)(1)(A).

Real property includes land and unsevered natural products of the land, improvements, and personal property associated with the use of real property. Section 1.897-1(b)(1). Section 1.897-1(b)(1) provides that local law definitions will not be controlling for purposes of determining the meaning of the term “real property” as it is used under section 897 and the regulations thereunder. The regulations define an “improvement” as a building, any other inherently permanent structure, or the structural components of either. Section 1.897-1(b)(3). For this purpose, an inherently permanent structure includes any property not otherwise described in § 1.897-1(b)(3) that is affixed to real property and that will ordinarily remain affixed for an indefinite period of time. Further, § 1.897-1(b)(3)(iii)(B) provides that an inherently permanent structure includes, for example, pavements and bridges.

The Code defines an “interest in real property” to include fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon. Section 897(c)(6)(A). Section 1.897-1(c)(1) further provides that the term USRPI also includes any interest, other than an interest solely as a creditor, in real property located in the United States or the Virgin Islands. Section 1.897-1(d)(2)(i) provides that an interest in real property other than an interest solely as a creditor includes any direct or indirect right to share in the appreciation in the value, or in the gross or net proceeds or profits generated by, the real property.

A USRPHC is generally defined as a corporation the fair market value of whose USRPIs equals or exceeds 50 percent of the fair market value of its worldwide interests in real property, including its USRPIs, plus its other assets which are used or held for use in a trade or business. Section 897(c)(2). For this purpose, assets used or held for use in a trade or business include, among other things, certain intangible property described in § 1.897-1(f)(1)(ii).

For purposes of determining whether any corporation is a USRPHC, assets

held by a partnership, trust, or estate are generally treated as held proportionately by its partners or beneficiaries. Section 897(c)(4)(B) and § 1.897-2(e)(2). The interest in the entity itself is disregarded when a proportionate share of the entity’s assets are attributed to the interest-holder. Section 1.897-2(e)(2). Further, any asset treated as held by a partner or beneficiary by reason of this rule which is used or held for use by the partnership, trust, or estate in a trade or business is treated as so used or held by the partner or beneficiary. Section 897(c)(4)(B) and § 1.897-2(e)(2). The proportionate ownership rules of Section 897(c)(4)(B) and § 1.897-2(e)(2) apply successively upward through a chain of ownership. Section 1.897-2(e)(2).

Explanation of Contemplated Regulations

The IRS and the Treasury Department are aware that in the transactions at issue taxpayers may be taking the position that for purposes of section 897 the governmental permit is not a USRPI within the meaning of section 897(c). Instead, these taxpayers may take the position that the governmental permit is an asset used or held for use in a trade or business. Further, these taxpayers may take the position that a significant portion of the fair market value of a DP’s assets is allocable to the governmental permit rather than to the assets comprising the specified infrastructure.

As noted in the Background section, under section 897(c)(2), a corporation is a USRPHC only if the fair market value of its USRPIs equals or exceeds 50 percent of the fair market value of its USRPIs plus its interests in real property located outside the United States, plus any other of its assets which are used or held for use in a trade or business. Therefore, if the fair market value of the governmental permit were treated as an asset used or held for use in a trade or business, and not a USRPI, the governmental permit would be taken into account in the denominator, but not the numerator, of the calculation provided for in section 897(c)(2) in order to determine whether any domestic corporation that is a partner in a DP is a USRPHC. Accounting for the governmental permit in this manner for purposes of the section 897(c)(2) calculation reduces the likelihood that a do-

mestic corporation to which such a right was attributed under section 897(c)(4)(B) would be treated as a USRPHC under section 897(c)(2).

The IRS and the Treasury Department, however, are of the view that in some of the transactions at issue the governmental permit may properly be characterized as a USRPI. Accordingly, the IRS and the Treasury Department are considering issuing proposed regulations regarding the definition of an interest in real property that would address certain licenses, permits, franchises, or other similar rights granted by a governmental unit (including, for purposes of section 897, an agency or instrumentality thereof) that are related to the value of the use or ownership of an interest in real property. The proposed regulations would address how the fair market value of such licenses, permits, franchises, or other similar rights should be taken into account when determining the fair market value of a corporation’s USRPIs and interests in real property located outside the United States under section 897(c)(2).

Proposed Effective Date

The IRS and the Treasury Department anticipate that the proposed regulations would apply for transactions occurring on or after the date of publication in the **Federal Register** as final or temporary regulations. No inference is intended as to how these arrangements are treated or characterized under current law.

Request for Comments

Before the notice of proposed rulemaking is issued, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. All comments will be available for public inspection and copying.

The IRS and Treasury Department specifically request comments on:

1. The scope of this regulatory project, the types of licenses, permits, franchises, or other similar rights granted by a governmental unit with respect to specified infrastructure that might be treated as related to the value of the lease, ownership, or use of an interest in real property, and what character-

istics should be taken into account in making that determination.

2. Whether this regulatory project should address the allocation of the consideration paid for the lease or purchase of a specified infrastructure and the license, permit, franchise, or other similar right to operate that specified infrastructure for purposes of determining the fair market value of such property.

In regard to the allocation of purchase price, comments are also sought as to whether, for purposes of allocating the consideration paid for a lease of the specified infrastructure and the license, permit, franchise, or other similar right to operate that specified infrastructure, the length of the lease (including whether the lease is for the useful life of the property) should be taken into account.

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

(Filed by the Office of the Federal Register on October 30, 2008, 8:45 a.m., and published in the issue of the Federal Register for October 31, 2008, 73 F.R. 64901)

Section 108 Reduction of Tax Attributes for S Corporations; Hearing Cancellation

Announcement 2008-116

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed rulemaking (REG-102822-08, 2008-38 I.R.B. 744) that provides guidance on the manner in which an S corporation reduces its tax attributes under section 108(b) for taxable years in which the S corporation has discharge of indebtedness income that is excluded from gross income under section 108(a).

DATES: The public hearing, originally scheduled for December 8, 2008 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Funmi Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A notice of proposed rulemaking and a notice of public hearing that appeared in the **Federal Register** on Wednesday, August 6, 2008 (73 FR 45656) announced that a public hearing was scheduled for December 8, 2008, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. The subject of the public hearing is under section 108 of the Internal Revenue Code.

The public comment period for the proposed rulemaking expired on November 4, 2008. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Thursday, November 13, 2008, no one has requested to speak. Therefore, the public hearing scheduled for December 8, 2008, is cancelled.

LaNita Van Dyke,
*Chief, Publications and
Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).*

(Filed by the Office of the Federal Register on November 19, 2008, 8:45 a.m., and published in the issue of the Federal Register for November 20, 2008, 73 F.R. 70289)

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
 B—Individual.
 BE—Beneficiary.
 BK—Bank.
 B.T.A.—Board of Tax Appeals.
 C—Individual.
 C.B.—Cumulative Bulletin.
 CFR—Code of Federal Regulations.
 CI—City.
 COOP—Cooperative.
 Ct.D.—Court Decision.
 CY—County.
 D—Decedent.
 DC—Dummy Corporation.
 DE—Donee.
 Del. Order—Delegation Order.
 DISC—Domestic International Sales Corporation.
 DR—Donor.
 E—Estate.
 EE—Employee.
 E.O.—Executive Order.

ER—Employer.
 ERISA—Employee Retirement Income Security Act.
 EX—Executor.
 F—Fiduciary.
 FC—Foreign Country.
 FICA—Federal Insurance Contributions Act.
 FISC—Foreign International Sales Company.
 FPH—Foreign Personal Holding Company.
 F.R.—Federal Register.
 FUTA—Federal Unemployment Tax Act.
 FX—Foreign corporation.
 G.C.M.—Chief Counsel's Memorandum.
 GE—Grantee.
 GP—General Partner.
 GR—Grantor.
 IC—Insurance Company.
 I.R.B.—Internal Revenue Bulletin.
 LE—Lessee.
 LP—Limited Partner.
 LR—Lessor.
 M—Minor.
 Nonacq.—Nonacquiescence.
 O—Organization.
 P—Parent Corporation.
 PHC—Personal Holding Company.
 PO—Possession of the U.S.
 PR—Partner.

PRS—Partnership.
 PTE—Prohibited Transaction Exemption.
 Pub. L.—Public Law.
 REIT—Real Estate Investment Trust.
 Rev. Proc.—Revenue Procedure.
 Rev. Rul.—Revenue Ruling.
 S—Subsidiary.
 S.P.R.—Statement of Procedural Rules.
 Stat.—Statutes at Large.
 T—Target Corporation.
 T.C.—Tax Court.
 T.D.—Treasury Decision.
 TFE—Transferee.
 TFR—Transferor.
 T.I.R.—Technical Information Release.
 TP—Taxpayer.
 TR—Trust.
 TT—Trustee.
 U.S.C.—United States Code.
 X—Corporation.
 Y—Corporation.
 Z—Corporation.

