

## HIGHLIGHTS OF THIS ISSUE

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

### INCOME TAX

#### **Rev. Rul. 2000-48, page 349.**

**Low-income housing credit; satisfactory bond; "bond factor" amounts for the period July through September 2000.** This ruling announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period July through September 2000.

#### **T.D. 8903, page 352.**

Final regulations under section 1397E of the Code provide guidance to state and local governments that issue qualified zone academy bonds and to banks, insurance companies, and other taxpayers that hold those bonds.

#### **T.D. 8904, page 350.**

Final regulations under sections 351, 354, 355, 356, and 1036 of the Code relate to the effective date of the definition of nonqualified preferred stock and the treatment of nonqualified preferred stock and similar preferred stock received by shareholders in certain reorganizations and distributions.

#### **REG-103805-99, page 376.**

Proposed regulations under section 1502 of the Code relate to the common parent of a consolidated group as agent for the members of the group. A public hearing is scheduled for January 22, 2001.

#### **Announcement 2000-82, page 385.**

The IRS released new Form 8870, *Information Return for Transfers Associated With Certain Personal Benefit Contracts*. For taxable years beginning prior to January 1,

2000, organizations that pay premiums on "personal benefit contracts," as that term is used in section 170(f)(10) of the Code, must file Form 8870 by the later of 90 days after this announcement or the date the organization is required to file its annual return. See also Notice 2000-24, 2000-17 I.R.B. 952.

### EMPLOYEE PLANS

#### **Rev. Proc. 2000-40, page 357.**

**Minimum funding standards; automatic change in funding method.** This procedure provides approval to change the funding method used to determine the minimum funding standard for defined benefit plans for plan years beginning on or after January 1, 2000, to any one of the specific methods contained therein. Rev. Proc. 95-51 superseded.

#### **Rev. Proc. 2000-41, page 371.**

**Qualified defined benefit plan; change in funding method.** This procedure sets forth an updated procedure that a plan administrator or plan sponsor may use to obtain approval to change the funding method of its qualified defined benefit plan. Rev. Proc. 78-37 superseded. Rev. Proc. 2000-4 modified.

### EMPLOYMENT TAX

#### **Page 354.**

**Railroad retirement; rate determination; quarterly.** The Railroad Retirement Board has determined that the rate of tax imposed by section 3221 of the Code shall be 26 1/2 cents for the quarter beginning October 1, 2000.

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Finding Lists begin on page ii.



## EXEMPT ORGANIZATIONS

### **Announcement 2000–82, page 385.**

The IRS released new Form 8870, *Information Return for Transfers Associated With Certain Personal Benefit Contracts*. For taxable years beginning prior to January 1, 2000, organizations that pay premiums on “personal benefit contracts,” as that term is used in section 170(f)(10) of the Code, must file Form 8870 by the later of 90 days after this announcement or the date the organization is required to file its annual return. See also Notice 2000–24, 2000–17 I.R.B. 952.

### **Announcement 2000–84, page 385.**

**Application of tax laws to use of the Internet by exempt organizations.** The Service requests comments on the need for guidance clarifying the application of Internal Revenue Code provisions to use of the Internet by exempt organizations.

## EXCISE TAX

### **Notice 2000–54, page 356.**

Determinations have been made to add nine polyether polyol substances to the list of taxable substances in section 4672(a)(3) of the Code.

# 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 consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

### **Part II.—Treaties and Tax Legislation.**

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

### **Part III.—Administrative, Procedural, and Miscellaneous.**

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

### **Part IV.—Items of General Interest.**

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

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

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

## Section 42.—Low-Income Housing Credit

**Low-income housing credit; satisfactory bond; “bond factor” amounts for the period July through September 2000.** This ruling announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period July through September 2000.

## Rev. Rul. 2000-48

In Rev. Rul. 90-60, 1990-2 C.B. 3, the Internal Revenue Service provided guidance to taxpayers concerning the general methodology used by the Treasury Department in computing the bond factor amounts used in calculating the amount of bond considered satisfactory by the Secretary under § 42(j)(6) of the Internal Revenue Code. It further announced that the Secretary would publish in the Inter-

nal Revenue Bulletin a table of “bond factor” amounts for dispositions occurring during each calendar month.

This revenue ruling provides in Table 1 the bond factor amounts for calculating the amount of bond considered satisfactory under § 42(j)(6) for dispositions of qualified low-income buildings or interests therein during the period July through September 2000.

Table 1 Rev. Rul. 2000-48 Monthly Bond Factor Amounts for Dispositions Expressed As a Percentage of Total Credits											
Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year											
Month of Disposition	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Jul '00	39.75	54.78	67.30	77.84	79.31	82.61	86.02	89.38	92.82	96.56	100.53
Aug '00	39.75	54.78	67.30	77.84	79.09	82.39	85.78	89.14	92.57	96.29	100.25
Sep '00	39.75	54.78	67.30	77.84	78.89	82.17	85.55	88.89	92.32	96.04	99.99

Table 1 (cont'd) Rev. Rul. 2000-48 Monthly Bond Factor Amounts for Dispositions Expressed As a Percentage of Total Credits				
Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year				
Month of Disposition	1998	1999	2000	
Jul '00	104.92	109.29	112.52	
Aug '00	104.64	109.02	112.52	
Sep '00	104.37	108.77	112.52	

For a list of bond factor amounts applicable to dispositions occurring during other calendar years, see the following revenue rulings: Rev. Rul. 98-3, 1998-1 C.B. 248, for dispositions occurring during the calendar years 1996 and 1997; Rev. Rul. 98-13, 1998-1 C.B. 686, for dispositions occurring during the period January through March 1998; Rev. Rul. 98-31, 1998-1 C.B. 1269, for disposi-

tions occurring during the period April through June 1998; Rev. Rul. 98-45, 1998-2 C.B. 364, for dispositions occurring during the period July through September 1998; Rev. Rul. 99-1, 1999-2 I.R.B. 4, for dispositions occurring during the period October through December 1998; Rev. Rul. 99-54, 1999-51 I.R.B. 675, for dispositions occurring during the calendar year 1999; Rev. Rul. 2000-22,

2000-16 I.R.B. 880, for dispositions occurring during the period January through March 2000; and Rev. Rul. 2000-31, 2000-26 I.R.B. 1269, for dispositions occurring during the period April through June 2000.

## DRAFTING INFORMATION

The principal author of this revenue ruling is Gregory N. Doran of the Office

of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Doran at (202) 622-3040 (not a toll-free call).

## Section 351.—Transfer to Corporation Controlled by Transferor

26 CFR 1.351-2: Receipt of property.

### T.D. 8904

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

### Treatment of Nonqualified Preferred Stock and Other Preferred Stock in Certain Exchanges and Distributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to nonqualified preferred stock. The regulations address the effective date of the definition of nonqualified preferred stock and the treatment of nonqualified preferred stock and similar preferred stock received by shareholders in certain corporate reorganizations and distributions. The regulations are necessary to reflect changes to the law concerning these types of preferred stock that were made by the Taxpayer Relief Act of 1997.

EFFECTIVE DATE: These regulations are effective October 2, 2000.

FOR FURTHER INFORMATION CONTACT: Richard E. Coss, (202) 622-7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

On January 26, 2000, the IRS and Treasury published in the **Federal Register** a notice of proposed rulemaking (REG-105089-99, 2000-6 I.R.B. 580 [65 F.R. 4203]) relating to nonqualified preferred stock (as defined in section 351(g)(2) of the Internal Revenue Code)

(NQPS). The proposed regulations address the effective date of the definition of NQPS, and provide rules exempting from treatment as NQPS certain preferred stock received by shareholders in corporate reorganizations and distributions subject to sections 354, 355, and 356.

No comments responding to the notice of proposed rulemaking were submitted, and no public hearing was requested or held. However, one commentator suggested that the rule in the proposed regulations interpreting section 351(g)(2)-(C)(i)(II) (relating to preferred stock transferred in connection with the performance of services) should be expanded to include transactions subject to section 351.

The IRS and Treasury agree with this suggestion. Accordingly, these final regulations extend the exemption from treatment as NQPS in §1.356-7(c) to preferred stock received by shareholders in certain stock exchanges under section 351. The proposed regulations are adopted as revised by this Treasury decision.

#### Special Analyses

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

#### Drafting Information

The principal author of these regulations is Richard E. Coss of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury participated in their development.

\* \* \* \* \*

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*  
Section 1.351-2 also issued under 26 U.S.C. 351(g)(4).  
Section 1.354-1 also issued under 26 U.S.C. 351(g)(4).  
Section 1.355-1 also issued under 26 U.S.C. 351(g)(4).  
Section 1.356-7 also issued under 26 U.S.C. 351(g)(4). \* \* \*  
Section 1.1036-1 also issued under 26 U.S.C. 351(g)(4). \* \* \*

Par. 2. Section 1.351-2 is amended by adding paragraph (e) to read as follows:

*§1.351-2 Receipt of property.*

\* \* \* \* \*

(e) See §1.356-7(a) for the applicability of the definition of nonqualified preferred stock in section 351(g)(2) for stock issued prior to June 9, 1997, and for stock issued in transactions occurring after June 8, 1997, that are described in section 1014(f)(2) of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788, 921). See §1.356-7(c) for the treatment of preferred stock received in certain exchanges for common or preferred stock described in section 351(g)(2)(C)(i)(II).

Par. 3. Section 1.354-1 is amended by adding paragraph (f) to read as follows:

*§1.354-1 Exchanges of stock and securities in certain reorganizations.*

\* \* \* \* \*

(f) See §1.356-7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)) received in certain exchanges for nonqualified preferred stock or preferred stock. See §1.356-7(c) for the treatment of preferred stock received in certain exchanges for common or preferred stock described in section 351(g)(2)(C)(i)(II).

Par. 4. Section 1.355-1 is amended by adding paragraph (d) to read as follows:



*§1.355-1 Distribution of stock and securities of a controlled corporation.*

\* \* \* \* \*

(d) *Nonqualified preferred stock.* See §1.356-7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)) received in certain exchanges for (or in certain distributions with respect to) nonqualified preferred stock or preferred stock. See §1.356-7(c) for the treatment of the receipt of preferred stock in certain exchanges for (or in certain distributions with respect to) common or preferred stock described in section 351(g)(2)(C)(i)(II).

Par. 5. Section 1.356-7 is added to read as follows:

*§1.356-7 Rules for treatment of nonqualified preferred stock and other preferred stock received in certain transactions.*

(a) *Stock issued prior to effective date.* Stock described in section 351(g)(2) is nonqualified preferred stock (NQPS) regardless of the date on which the stock is issued. However, sections 351(g), 354(a)(2)(C), 355(a)(3)(D), 356(e), and 1036(b) do not apply to any transaction occurring prior to June 9, 1997, or to any transaction occurring after June 8, 1997, that is described in section 1014(f)(2) of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788, 921). For purposes of this section, preferred stock that is not NQPS is referred to as Qualified Preferred Stock (QPS).

(b) *Receipt of preferred stock in exchange for (or distribution on) substantially identical preferred stock—(1) General rule.* For purposes of sections 354(a)(2)(C)(i), 355(a)(3)(D), and 356(e)(2), preferred stock is QPS, even though it is described in section 351(g)(2), if it is received in exchange for (or in a distribution with respect to) preferred stock (the original preferred stock) that is QPS, provided —

(i) The original preferred stock is QPS solely because, on its issue date, either a right or obligation described in clause (i), (ii), or (iii) of section 351(g)(2)(A) was not exercisable until after a 20-year period beginning on the issue date, or the right or obligation was exercisable within the 20-year period beginning on the issue date but was subject to a contingency

which made remote the likelihood of the redemption or purchase, or the issuer's (or a related party's) right to redeem or purchase the stock was not more likely than not to be exercised within a 20-year period beginning on the issue date, or because of any combination of these reasons; and

(ii) The stock received is substantially identical to the original preferred stock.

(2) *Substantially identical.* The stock received is substantially identical to the original preferred stock if—

(i) The stock received does not contain any term or terms that, in relation to any term or terms of the original preferred stock, either decrease the period in which a right or obligation described in clause (i), (ii), or (iii) of section 351(g)(2)(A) can be exercised, or increase the likelihood that such a right or obligation will be exercised, or accelerate the timing of the returns from the stock instrument, including the timing of actual or deemed dividends or other distributions received on the stock; and

(ii) As a result of the exchange or distribution, exercise of the right or obligation does not become more likely than not to occur within a 20-year period beginning on the issue date of the original preferred stock.

(3) *Treatment of stock received.* The stock received will continue to be treated as QPS in subsequent transactions involving such stock, and the principles of this paragraph (b) apply to such transactions as though the stock received is the original preferred stock issued on the same date as the original preferred stock.

(c) *Stock transferred for services.* For purposes of sections 351(g)(1), 354(a)(2)(C)(i), 355(a)(3)(D), and 356(e)(2), preferred stock containing a right or obligation described in clause (i), (ii) or (iii) of section 351(g)(2)(A) that is exercisable only upon the holder's separation from service from the issuer or a related person (as described in section 351(g)(3)(B)) will be treated as transferred in connection with the performance of services (and representing reasonable compensation) within the meaning of section 351(g)(2)(C)(i)(II), if such preferred stock is received in exchange for (or in a distribution with respect to) existing stock containing a similar right or obligation (exercisable only upon separation from

service) and the existing stock was transferred in connection with the performance of services for the issuer or a related person (and represented reasonable compensation when transferred). In applying the rules relating to NQPS, the preferred stock received will continue to be treated as transferred in connection with the performance of services (and representing reasonable compensation) in subsequent transactions involving such stock, and the principles of this paragraph (c) apply to such transactions.

(d) *Rights to acquire stock.* For purposes of §1.356-6, the principles of paragraphs (a), (b), and (c) of this section apply.

(e) *Examples.* In the examples in this paragraph (e), T and P are corporations, A is a shareholder of T, and A surrenders and receives (in addition to the stock exchanged in the examples) common stock in the reorganizations described. The following examples illustrate paragraphs (a), (b), and (c) of this section:

*Example 1.* In 1995, A transfers property to T and receives T preferred stock that is described in section 351(g)(2) in a transaction under section 351. In 2002, pursuant to a reorganization under section 368(a)(1)(B), A surrenders the T preferred stock in exchange for P NQPS. Under paragraph (a) of this section, the T preferred stock issued to A in 1995 is NQPS. However, because section 351(g) does not apply to transactions occurring before June 9, 1997, the T NQPS was not "other property" within the meaning of section 351(b) when issued in 1995. Under sections 354(a)(2)(C) and 356(e)(2), the P NQPS received by A in 2002 is not "other property" within the meaning of section 356(a)(1)(B) because it is received in exchange for NQPS.

*Example 2.* T issues QPS to A on January 1, 2000 that is not NQPS solely because the holder cannot require T to redeem the stock until January 1, 2022. In 2007, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A surrenders the T preferred stock in exchange for P preferred stock with terms that are identical to the terms of the T preferred stock, including the term that the holder cannot require the redemption of the stock until January 1, 2022. Because the P stock and the T stock have identical terms, and because the redemption did not become more likely than not to occur within the 20-year period that begins on January 1, 2000 (which is the issue date of the T preferred stock) as a result of the exchange, under paragraph (b) of this section, the P preferred stock received by A is treated as QPS. Thus, the P preferred stock received is not "other property" within the meaning of section 356(a)(1)(B).

*Example 3.* The facts are the same as in *Example 2*, except that, in addition, in 2010, pursuant to a recapitalization of P under section 368(a)(1)(E), A exchanges the P preferred stock above for P NQPS that permits the holder to require P to redeem the stock in 2020. Under paragraph (b) of this section, the P preferred stock surrendered by A is treated as QPS. Be-

cause the P preferred stock received by A in the recapitalization is not substantially identical to the P preferred stock surrendered, the P preferred stock received by A is not treated as QPS. Thus, the P preferred stock received is "other property" within the meaning of section 356(a)(1)(B).

*Example 4.* T issues preferred stock to A on January 1, 2000 that permits the holder to require T to redeem the stock on January 1, 2018, or at any time thereafter, but which is not NQPS solely because, as of the issue date, the holder's right to redeem is subject to a contingency that makes remote the likelihood of redemption on or before January 1, 2020. In 2007, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A surrenders the T preferred stock in exchange for P preferred stock with terms that are identical to the terms of the T preferred stock. Immediately before the exchange, the contingency to which the holder's right to cause redemption of the T stock is subject makes remote the likelihood of redemption before January 1, 2020, but the P stock, although subject to the same contingency, is more likely than not to be redeemed before January 1, 2020. Because, as a result of the exchange of T stock for P stock, the exercise of the redemption right became more likely than not to occur within the 20-year period beginning on the issue date of the T preferred stock, the P preferred stock received by A is not substantially identical to the T stock surrendered, and is not treated as QPS. Thus, the P preferred stock received is "other property" within the meaning of section 356(a)(1)(B).

*Example 5.* The facts are the same as in *Example 4*, except that, immediately before the merger of T into P in 2007, the contingency to which the holder's right to cause redemption of the T stock is subject makes it more likely than not that the T stock will be redeemed before January 1, 2020. Because exercise of the redemption right did not become more likely than not to occur within the 20-year period beginning on the issue date of the T preferred stock as a result of the exchange, the P preferred stock received by A is substantially identical to the T stock surrendered, and is treated as QPS. Thus, the P preferred stock received is not "other property" within the meaning of section 356(a)(1)(B).

*Example 6.* A is an employee of T. In connection with A's performance of services for T, T transfers to A in 2000 an amount of T common stock that represents reasonable compensation. The T common stock contains a term granting A the right to require T to redeem the common stock, but only upon A's separation from service from T. In 2005, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A receives, in exchange for A's T common stock, P preferred stock granting a similar redemption right upon A's separation from P's service. Under paragraph (c) of this section, the P preferred stock received by A is treated as transferred in connection with the performance of services (and representing reasonable compensation) within the meaning of section 351(g)(2)(C)(i)(II). Thus, the P preferred stock received by A is QPS.

(f) *Effective dates.* This section applies to transactions occurring on or after October 2, 2000.

Par. 6. Section 1.1036-1 is amended by adding paragraph (d) to read as follows:

*§1.1036-1 Stock for stock of the same corporation.*

\* \* \* \* \*

(d) *Nonqualified preferred stock.* See §1.356-7(a) for the applicability of the definition of nonqualified preferred stock in section 351(g)(2) for stock issued prior to June 9, 1997, and for stock issued in transactions occurring after June 8, 1997, that are described in section 1014(f)(2) of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788, 921).

Robert E. Wenzel,  
*Deputy Commissioner  
of Internal Revenue.*

Approved September 25, 2000.

Jonathan Talisman,  
*Acting Assistant Secretary  
of the Treasury.*

(Filed by the Office of the Federal Register on September 29, 2000, 8:45 a.m., and published in the issue of the Federal Register for October 2, 2000, 65 F.R. 58650)

## Section 412.—Minimum Funding Standards

A revenue procedure describes certain changes to the funding method used to determine the minimum funding standard for defined benefit plans for plan years beginning on or after January 1, 2000. See Rev. Proc. 2000-40, page 357.

A procedure describes a method whereby a plan administrator or plan sponsor may obtain approval for a change in funding method. See Rev. Proc. 2000-41, page 371.

## Section 1397.—Other Definitions and Special Rules

26 CFR 1.1397E-1: *Qualified zone academy bonds.*

### T.D. 8903

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

### Qualified Zone Academy Bonds; Obligations of States and

## Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the Federal income tax treatment of qualified zone academy bonds. These regulations provide guidance to State and local governments that issue qualified zone academy bonds and to banks, insurance companies, and other taxpayers that hold those bonds. These regulations make final certain temporary regulations.

DATES: *Effective Date:* These regulations are effective September 26, 2000.

*Applicability Date:* For dates of applicability, see §1.1397E-1(k).

FOR FURTHER INFORMATION CONTACT: Timothy L. Jones or Allan B. Seller at 202-622-3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### Background

Section 226(a) of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788), amended the Internal Revenue Code (Code) by redesignating section 1397E as section 1397F and adding a new section 1397E. Section 1397E authorizes a type of debt instrument known as a qualified zone academy bond.

### Explanation of Provisions

#### *In General*

A qualified zone academy bond is a taxable bond issued by a State or local government, the proceeds of which are used to enhance certain eligible public schools. In lieu of receiving periodic interest payments from the issuer, an eligible holder of a qualified zone academy bond is generally allowed annual federal income tax credits while the bond is outstanding. These credits compensate the holder for lending money to the issuer and function as payments of interest on the bond.

Temporary regulations (REG-119-449-97, 1998-1 C.B. 667) interpreting section 1397E were published on January 7, 1998 (63 F.R. 671), and amended on

July 1, 1999 (64 F.R. 35573). The temporary regulations generally treat the allowance of the credit as if it were a payment of interest on the bond.

Code section 1397E(e), as amended by section 509 of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170 (113 Stat. 1860), imposes a national limitation on the amount of qualified zone academy bonds that can be issued. For each applicable year, the IRS publishes a revenue procedure allocating the national limitation among the States and the possessions.

#### *Bonds Issued by a State or Local Government*

Section 1397E(d)(1)(B) requires that a qualified zone academy bond be issued by a State or local government within the jurisdiction of which a qualified zone academy (as defined in section 1397E(d)(4)) is located. Commentators requested clarification that, for these purposes, a State or local government means a State or political subdivision as defined for purposes of section 103(c). Commentators also requested that the final regulations include a provision for the issuance of qualified zone academy bonds on behalf of a State or local government in a manner similar to the issuance of obligations on behalf of a State or political subdivision under section 103.

The final regulations provide that, for purposes of section 1397E(d)(1)(B), the term *State or local government* means a State or political subdivision as defined for purposes of section 103(c). The final regulations also specify that a qualified zone academy bond may be issued on behalf of a State or local government under rules similar to those for determining whether a bond issued on behalf of a State or political subdivision constitutes an obligation of that State or political subdivision for purposes of section 103.

#### *Private Business Contribution Requirement*

Section 1397E(d)(1)(C)(ii) requires the issuer of a qualified zone academy bond to certify that it has written assurances that the private business contribution requirement of section 1397E(d)(2) will be met with respect to the qualified zone academy. For these purposes, the private

business contribution requirement is met if the eligible local education agency (as defined in section 1397E(d)(4)(B)) has written commitments from private entities to make qualified contributions having a present value as of the issue date of 10 percent or more of the proceeds of the issue.

The Code does not define *private entities* for these purposes. Section 1397E(d)(2)(B) defines *qualified contribution* as any contribution (of a type and quality acceptable to the eligible local education agency) of (i) equipment for use in the qualified zone academy, (ii) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom, (iii) services of employees as volunteer mentors, (iv) internships, field trips, or other educational opportunities outside the academy for students, or (v) any other property or service specified by the eligible local education agency.

Commentators requested clarification of the meaning of *private entities* for these purposes. For example, commentators asked whether the term may include an organization described in section 501(c)(3) or a private individual.

The final regulations provide that, for purposes of section 1397E(d)(2)(A), the term *private entities* includes any person (as defined in section 7701(a)) other than the United States, a State or local government, or any agency or instrumentality thereof or related party with respect thereto.

Commentators also sought clarification regarding the meaning of *qualified contribution* under section 1397E(d)(2)(B). The final regulations provide that cash received with respect to a qualified zone academy from a private entity constitutes a qualified contribution if it is to be used to purchase any property or service described in section 1397E(d)(2)(B)(i), (ii), (iii), (iv) or (v). The final regulations also indicate that services of employees of the eligible local education agency do not constitute qualified contributions.

#### *Issuer Certifications*

Section 1397E(d)(1)(C) requires the issuer to certify (1) that it has written assurances that the private business contribution requirement will be met, and (2) that it has the written approval of the eligible

local education agency for the bond issuance. The Treasury and the IRS intend that these certifications will be respected and may be relied on by taxpayers if the certifications are reasonably made.

#### *95 Percent Test*

Section 1397E(d)(1)(A) requires that 95 percent or more of the proceeds of an issue of qualified zone academy bonds be used for a qualified purpose described in section 1397E(d)(5) with respect to a qualified zone academy. The Treasury and the IRS intend that the qualified purposes set forth in section 1397E(d)(5) are to be broadly interpreted. The Treasury and the IRS also intend that issuers may apply principles similar to the requirements of §1.142-2 (without regard to the requirement therein that the period between the issue date and the first call date not exceed 10 1/2 years) to cure an unexpected failure to spend 95 percent or more of the proceeds of an issue for a qualified purpose. Further, the Treasury and the IRS intend that taxpayers may rely on an issuer's determination that a public school (or academic program within a public school) is a qualified zone academy for purposes of section 1397E(d)(4) if the determination has a reasonable basis.

#### *Effective Dates*

The final regulations apply to bonds sold on or after September 26, 2000. In addition, the final regulations permit elective, retroactive application to bonds sold before September 26, 2000, of either of the following sections of the regulations: §1.1397E-1(c) (private business contribution requirement) and §1.1397E-1(i) (State or local government).

#### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply. The Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply because these regulations do not impose a collection of information on small entities. Pursuant to section 7805(f) of the Code, the notice of pro-



posed rulemaking preceding these regulations was sent to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

\* \* \* \* \*

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for Section 1.1397E-1T and adding a new entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \* Section 1.1397E-1 also issued under 26 U.S.C. 1397E(b) and (d).

#### §1.1397E-1T [Redesignated as §1.1397E-1]

Par. 2. Section 1.1397E-1T is redesignated as '1.1397E-1.

Par. 3. Newly designated '1.1397E-1 is amended as follows:

1. The section heading is revised.
2. Revising paragraphs (c), (f)(2), (i) and (j).
3. Adding a new paragraph (k).

The revisions and addition read as follows:

#### §1.1397E-1 *Qualified zone academy bonds.*

\* \* \* \* \*

(c) *Private business contribution requirement*—(1) *Reasonable discount rate.* To determine the present value (as of the issue date) of qualified contributions from private entities under section 1397E(d)(2), the issuer must use a reasonable discount rate. The credit rate determined under paragraph (b) of this section is a reasonable discount rate.

(2) *Definition of private entities.* For purposes of section 1397E(d)(2)(A), the term *private entities* includes any person (as defined in section 7701(a)) other than the United States, a State or local government, or any agency or instrumentality thereof or related party with respect thereto. To determine whether a person is related to the United States or a State or local government under this paragraph

(c)(2), rules similar to those for determining whether a person is a related party under §1.150-1(b) shall apply (treating the United States as a governmental unit for purposes of §1.150-1(b)).

(3) *Qualified contribution.* For purposes of section 1397E(d)(2)(A), the term *qualified contribution* means any contribution (of a type and quality acceptable to the eligible local education agency) of any property or service described in section 1397E(d)(2)(B)(i), (ii), (iii), (iv) or (v). In addition, cash received with respect to a qualified zone academy from a private entity (other than cash received indirectly from a person that is not a private entity as part of a plan to avoid the requirements of section 1397E) constitutes a qualified contribution if it is to be used to purchase any property or service described in section 1397E(d)(2)(B)(i), (ii), (iii), (iv) or (v). Services of employees of the eligible local education agency do not constitute qualified contributions.

\* \* \* \* \*

(f) \* \* \*

(2) *Adjustment if the holder cannot use the credit to offset a tax liability.* If a holder holds a qualified zone academy bond on the credit allowance date but cannot use all or a portion of the credit to reduce its income tax liability (for example, because the holder is not an eligible taxpayer or because the limitation in section 1397E(c) applies), the holder is allowed a deduction for the taxable year that includes the credit allowance date (or, at the option of the holder, the next succeeding taxable year). The amount of the deduction is equal to the amount of the unused credit deemed paid on the credit allowance date.

\* \* \* \* \*

(i) *State or local government*—(1) *In general.* For purposes of section 1397E(d)(1)(B), the term *State or local government* means a State or political subdivision as defined for purposes of section 103(c).

(2) *On behalf of issuer.* A qualified zone academy bond may be issued on behalf of a State or local government under rules similar to those for determining whether a bond issued on behalf of a State or political subdivision constitutes an obligation of that State or political subdivision for purposes of section 103.

(j) *Cross-references.* See section 171 and the regulations thereunder for rules relating

to amortizable bond premium. See §1.61-7(d) for the seller's treatment of a bond sold between interest payment dates (credit allowance dates) and §1.61-7(c) for the buyer's treatment of a bond purchased between interest payment dates (credit allowance dates).

(k) *Effective dates.* Except as provided in this paragraph (k), this section applies to bonds sold on or after September 26, 2000. Each of paragraphs (c) and (i) of this section may be applied by issuers to bonds that are sold before September 26, 2000.

Bob Wenzel,  
Deputy Commissioner  
of Internal Revenue.

Approved September 19, 2000.

Jonathan Talisman,  
Acting Assistant Secretary  
of the Treasury.

(Filed by the Office of the Federal Register on September 25, 2000, 8:45 a.m., and published in the issue of the Federal Register for September 26, 2000, 65 F.R. 57732)

## Section 3221.—Rate of Tax

### Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(a) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 2000, shall be at the rate of 26 1/2 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 2000, 38.3 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 61.7 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to

the Railroad Retirement Supplemental Account.

Dated August 30, 2000.

By Authority of the Board.

Beatrice Ezerski,  
*Secretary to the Board.*

(Filed by the Office of the Federal Register on September 11, 2000, 8:45 a.m., and published in the issue of the Federal Register for September 12, 2000, 65 F.R. 55066)

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## Part III. Administrative, Procedural, and Miscellaneous

### Tax on Certain Imported Substances; Notice of Determinations

#### Notice 2000-54

This notice announces determinations, under Notice 89-61 (1989-1 C.B. 717), that the list of taxable substances in § 4672(a)(3) will be modified to include nine polyether polyol substances. This modification is effective October 1, 1992.

#### Background

Under § 4672(a), an importer or exporter of any substance may request that the Secretary determine whether that substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in § 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production. Notice 89-61 sets forth the rules relating to the determination process.

#### Determinations

On July 14, 2000, the Secretary determined that nine polyether polyol substances should be added to the list of taxable substances in § 4672(a)(3), effective October 1, 1992.

The rate of tax prescribed for poly(propylene)glycol, under § 4671(b)(3), is \$7.74 per ton. This is based upon a conversion factor for propylene of 0.781, a conversion factor for chlorine of 1.31, and a conversion factor for sodium hydroxide of 1.43.

The rate of tax prescribed for poly(propylene/ethylene)glycol, under § 4671(b)(3), is \$7.16 per ton. This is based upon a conversion factor for propylene of 0.663, a conversion factor for chlorine of 1.11, a conversion factor for sodium hydroxide of 1.21, and a conversion factor for ethylene of 0.123.

The rate of tax prescribed for poly(propyleneoxy)glycerol, under § 4671(b)(3), is \$6.38 per ton. This is based upon a conversion factor for propylene of 0.645, a

conversion factor for chlorine of 1.08, and a conversion factor for sodium hydroxide of 1.18.

The rate of tax prescribed for poly(ethyleneoxy)glycerol, under § 4671(b)(3), is \$3.31 per ton. This is based upon a conversion factor for ethylene of 0.681.

The rate of tax prescribed for poly(propyleneoxy/ethyleneoxy)glycerol, under § 4671(b)(3), is \$7.20 per ton. This is based upon a conversion factor for propylene of 0.71, a conversion factor for chlorine of 1.05, a conversion factor for sodium hydroxide of 1.05, and a conversion factor for ethylene of 0.126.

The rate of tax prescribed for poly(propyleneoxy)sucrose, under § 4671(b)(3), is \$4.18 per ton. This is based upon a conversion factor for propylene of 0.423, a conversion factor for chlorine of 0.707, and a conversion factor for sodium hydroxide of 0.773.

The rate of tax prescribed for poly(propyleneoxy/ethyleneoxy)sucrose, under § 4671(b)(3), is \$6.11 per ton. This is based upon a conversion factor for propylene of 0.549, a conversion factor for chlorine of 0.918, a conversion factor for sodium hydroxide of 1.0, and a conversion factor for ethylene of 0.14.

The rate of tax prescribed for poly(propyleneoxy/ethyleneoxy)diamine, under § 4671(b)(3), is \$4.92 per ton. This is based upon a conversion factor for propylene of 0.498, a conversion factor for chlorine of 0.833, and a conversion factor for sodium hydroxide of 0.91.

The rate of tax prescribed for poly(propyleneoxy/ethyleneoxy)benzenediamine, under § 4671(b)(3), is \$5.25 per ton. This is based upon a conversion factor for propylene of 0.491, a conversion factor for chlorine of 0.821, a conversion factor for sodium hydroxide of 0.897, and a conversion factor for ethylene of 0.081.

The petitioner is Dow Chemical Company, a manufacturer and exporter of these substances. No material comments were received on this petition. The following information is the basis for the determinations.

The nine polyether polyol substances are liquids. They are produced predominantly by the base-catalyzed reaction of cyclic ethers, usually ethylene oxide and propylene oxide, with active hydrogen-contain-

ing compounds (initiators) such as water, glycols, polyols, and amines. The reaction is carried out by a discontinuous batch process at elevated temperatures and pressures and under an inert atmosphere. The particular substance produced depends upon the oxides, initiators, reaction conditions, and catalysts used. The stoichiometric amounts of oxide reacted on the initiator determine the chain lengths and thus the molecular weights. The HTS number for these substances is 3907.20.00.

#### Poly(propylene)glycol

CAS number: 025322-69-4

Poly(propylene)glycol is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is:  $n+1(C_3H_6 \text{ (propylene)} + Cl_2 \text{ (chlorine)} + 2 NaOH \text{ (sodium hydroxide)}) + H_2O \text{ (water)} \rightarrow C_3H_8O_2(C_3H_6O)_n \text{ (poly(propylene)glycol)} + n+1(2 NaCl \text{ (sodium chloride)} + H_2O \text{ (water)})$

Poly(propylene)glycol has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute at least 90 percent by weight of the materials used in its production.

#### Poly(propylene/ethylene)glycol

CAS number: 053637-25-5

Poly(propylene/ethylene)glycol is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is:  $n+1(C_3H_6 \text{ (propylene)} + Cl_2 \text{ (chlorine)} + 2 NaOH \text{ (sodium hydroxide)}) + H_2O \text{ (water)} + m/2(2 C_2H_4 \text{ (ethylene)} + O_2 \text{ (oxygen)}) \rightarrow C_3H_8O_2(C_3H_6O)_n(C_2H_4O)_m \text{ (poly(propylene/ethylene)glycol)} + n+1(2 NaCl \text{ (sodium chloride)} + H_2O \text{ (water)})$

Poly(propylene/ethylene)glycol has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute at least 90 percent by weight of the materials used in its production.

### **Poly(propyleneoxy)glycerol**

CAS number: 025791-96-2

Poly(propyleneoxy)glycerol is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is:  $C_3H_8O_3$  (glycerine) +  $n(C_3H_6$  (propylene) +  $Cl_2$  (chlorine) + 2 NaOH (sodium hydroxide))  $\rightarrow C_3H_8O_3(C_3H_6O)_n$  (poly(propyleneoxy)glycerol) +  $n(2 NaCl$  (sodium chloride) +  $H_2O$  (water))

Poly(propyleneoxy)glycerol has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute at least 85 percent by weight of the materials used in its production.

### **Poly(ethyleneoxy)glycerol**

CAS number: 031694-55-0

Poly(ethyleneoxy)glycerol is derived from the taxable chemical ethylene.

The stoichiometric material consumption formula for this substance is:  $C_3H_8O_3$  (glycerine) +  $m/2(2 C_2H_4$  (ethylene) +  $O_2$  (oxygen))  $\rightarrow C_3H_8O_3(C_2H_4O)_m$  (poly(ethyleneoxy)glycerol)

Poly(ethyleneoxy)glycerol has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute more than 50 percent by weight of the materials used in its production.

### **Poly(propyleneoxy/ethyleneoxy)glycerol**

CAS number: 009082-00-2

Poly(propyleneoxy/ethyleneoxy)glycerol is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is:  $C_3H_8O_3$  (glycerine) +  $n(C_3H_6$  (propylene) +  $Cl_2$  (chlorine) + 2 NaOH (sodium hydroxide)) +  $m/2(2 C_2H_4$  (ethylene) +  $O_2$  (oxygen))  $\rightarrow C_3H_8O_3(C_3H_6O)_n(C_2H_4O)_m$  (poly(propyleneoxy/ethyleneoxy)glycerol) +  $n(2 NaCl$  (sodium chloride) +  $H_2O$  (water))

Poly(propyleneoxy/ethyleneoxy)glycerol has been determined to be a taxable substance because a review of its stoichiometric material consumption formula

shows that, based on the predominant method of production, taxable chemicals constitute at least 85 percent by weight of the materials used in its production.

### **Poly(propyleneoxy)sucrose**

CAS number: 009049-71-2

Poly(propyleneoxy)sucrose is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is:  $C_{12}H_{22}O_{11}$  (sucrose) +  $n(C_3H_6$  (propylene) +  $Cl_2$  (chlorine) + 2 NaOH (sodium hydroxide))  $\rightarrow C_{12}H_{22}O_{11}(C_3H_6O)_n$  (poly(propyleneoxy)sucrose) +  $n(2 NaCl$  (sodium chloride) +  $H_2O$  (water))

Poly(propyleneoxy)sucrose has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute at least 65 percent by weight of the materials used in its production.

### **Poly(propyleneoxy/ethyleneoxy)sucrose**

CAS number: 026301-10-0

Poly(propyleneoxy/ethyleneoxy) sucrose is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is:  $C_{12}H_{22}O_{11}$  (sucrose) +  $n(C_3H_6$  (propylene) +  $Cl_2$  (chlorine) + 2 NaOH (sodium hydroxide)) +  $m/2(2 C_2H_4$  (ethylene) +  $O_2$  (oxygen))  $\rightarrow C_{12}H_{22}O_{11}(C_3H_6O)_n(C_2H_4O)_m$  (poly(propyleneoxy/ethyleneoxy)sucrose) +  $n(2 NaCl$  (sodium chloride) +  $H_2O$  (water))

Poly(propyleneoxy/ethyleneoxy) sucrose has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute at least 75 percent by weight of the materials used in its production.

### **Poly(propyleneoxy/ethyleneoxy)diamine**

CAS number: 031568-06-6

Poly(propyleneoxy/ethyleneoxy)diamine is derived from the taxable chemicals propylene, chlorine, and sodium hydroxide.

The stoichiometric material consumption formula for this substance is:

$C_4H_{12}N_2O$  (aminoethylethanolamine) +  $n(C_3H_6$  (propylene) +  $Cl_2$  (chlorine) + 2 NaOH (sodium hydroxide))  $\rightarrow C_4H_{12}N_2O(C_3H_6O)_n$  (poly(propyleneoxy/ethyleneoxy)diamine) +  $n(2 NaCl$  (sodium chloride) +  $H_2O$  (water))

Poly(propyleneoxy/ethyleneoxy) diamine has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute at least 60 percent by weight of the materials used in its production.

### **Poly(propyleneoxy/ethyleneoxy)benzenediamine**

CAS number: 067800-94-6

Poly(propyleneoxy/ethyleneoxy)benzenediamine is derived from the taxable chemicals propylene, chlorine, sodium hydroxide, and ethylene.

The stoichiometric material consumption formula for this substance is:

$C_7H_{10}N_2$  (ortho-toluenediamine) +  $n(C_3H_6$  (propylene) +  $Cl_2$  (chlorine) + 2 NaOH (sodium hydroxide)) +  $m/2(2 C_2H_4$  (ethylene) +  $O_2$  (oxygen))  $\rightarrow C_7H_{10}N_2(C_3H_6O)_n(C_2H_4O)_m$  (poly(propyleneoxy/ethyleneoxy)benzenediamine) +  $n(2 NaCl$  (sodium chloride) +  $H_2O$  (water))

Poly(propyleneoxy/ethyleneoxy)benzenediamine has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute at least 60 percent by weight of the materials used in its production.

The principal author of this notice is Ruth Hoffman, Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Ruth Hoffman at (202) 622-3130 (not a toll-free number).

*26 CFR 601.201: Rulings and determination letters.  
(Also, Part I, § 412.)*

## **Rev. Proc. 2000-40**

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## DRAFTING INFORMATION

### SECTION 1. PURPOSE AND SCOPE

- .01 This revenue procedure provides approval to change the funding method used to determine the minimum funding

standard for defined benefit plans as further described below. The approval under this revenue procedure is granted in accordance with § 412(c)(5) of the Internal Revenue Code and section 302(c)(5) of the Employee Retirement Income Security Act of 1974 (ERISA). Section 3 provides approval to change the funding method of the plan to one of seventeen methods, including a change in the asset valuation method to one of six asset valuation methods, a change in the valuation date to the first day of the plan year, and a change in the method for valuing ancillary benefits to the method used to value retirement benefits. Section 4 provides approvals for certain changes that become necessary or expedient under special circumstances.

.02 Any changes in funding method under this revenue procedure must satisfy the rules of Section 5 concerning the continued maintenance of certain amortization bases, the creation of an amortization base resulting from the change in method (method change base), and the amortization period for the method change base. Taxpayers, plan administrators, and enrolled actuaries are cautioned to consider the overall restrictions for use of this procedure (see section 6.01), the additional restrictions for approval of any of the changes listed in section 3 (see section 6.02), and specific restrictions described under each of the approvals. Approval for changes not provided by this revenue procedure may be requested from the Internal Revenue Service.

.03 The funding method changes approved in this revenue procedure also apply for purposes of § 404. However, calculations under the funding method for purposes of § 404 may require certain modifications to elements in the calculations. For example, for purposes of § 412, the value of assets used in the determination of the normal cost under an aggregate funding method is adjusted for any credit balance or funding deficiency in the funding standard account. The value of assets is not adjusted in that manner for purposes of § 404 but is, instead, adjusted for any undeducted contributions (see § 1.404(a)-14(d)(2) of the Income Tax Regulations).

.04 The application of a funding method must conform to all of the re-

quirements of the regulations under § 412. Thus, for example, in a method which allocates liabilities among different elements of past and future service, the allocation of liabilities must be reasonable as required under § 1.412(c)(3)–1(c)(5).

## SECTION 2. BACKGROUND

.01 Section 412(c)(5)(A), as amended, and section 302(c)(5)(A) of ERISA, Pub. L. 93–406, 1974–3 C.B. 1, 40, as amended, state that if the funding method of a plan is changed, the new funding method shall become effective only if the change is approved by the Secretary.

.02 Section 1.412(c)(1)–1 provides that the term “funding method”, when used in § 412 of the Code, has the same meaning as the term “actuarial cost method” in section 3(31) of ERISA. Section 1.412(c)(1)–1 of the regulations further provides that the funding method of a plan includes not only the overall funding method used by the plan but also each specific method of computation used in applying the overall method. Therefore, for example, the funding method of a plan includes the date on which assets and liabilities are valued (the valuation date). The funding method also includes the definition of compensation which is used to determine the normal cost or accrued liability. Furthermore, a change in a particular aspect of a funding method does not change any other aspects of that method. For example, a change in funding method from the unit credit to the level dollar individual entry age normal method does not change the current valuation date or asset valuation method used for the plan.

.03 Section 1.412(c)(2)–1 generally provides that a change in the actuarial valuation method used to value the assets of a plan is a change in funding method that requires approval under § 412(c)(5) of the Code.

.04 Rev. Proc. 95–51, 1995–2 C.B. 431, as modified by Rev. Proc. 98–10, 1998–1 C.B. 279, and by Rev. Proc. 99–45, 1999–49 I.R.B. 603, granted approval for certain changes in funding method. Rev. Proc. 2000–41, 2000–42 I.R.B. 371, provides the procedure by which a plan administrator or plan sponsor may obtain approval of the Secretary of the Treasury for a change in funding method.

## SECTION 3. APPROVAL FOR SPECIFIED CHANGES

Subject to the applicability restrictions of section 6 and to the individual conditions under each method below, approval is granted for a change to one of the following funding methods. The development of the normal cost is described for each of the funding methods provided in subsections .01, through .09. For funding methods that directly calculate an accrued liability, within the meaning of Rev. Rul. 81–13, 1981–1 C.B. 229, the development of the accrued liability is also described.

.01 Approval 1. Approval is granted for a change in funding method to the unit credit funding method described below.

(1) This approval does not apply if the plan is a cash balance plan. For this purpose, a cash balance plan is a defined benefit plan that defines any portion of an employee’s benefits by reference to the employee’s hypothetical account, where such hypothetical account is determined by reference to hypothetical allocations and hypothetical earnings that are designed to mimic the actual allocations of contributions and earnings to an employee’s account that would occur under a defined contribution plan.

(2) Under this method, the normal cost is the sum of the individual normal costs for all active participants. An individual normal cost is the sum of the normal costs for the various benefits valued using the method. The normal cost for each benefit is the present value of the portion of the projected benefit at each expected separation date that is allocated to the current plan year as set forth in paragraphs (5) and (6) below. For purposes of this approval, separation date includes any date of benefit commencement, if earlier.

(3) The accrued liability under the method is the sum of the individual accrued liabilities for each participant. An individual’s accrued liability is the sum of the accrued liabilities for the various benefits valued using the method. The accrued liability for each benefit is the present value of the portion of the projected benefit at each expected separation date that is allocated to prior plan years as set forth in paragraphs (4), (5), and (6) below.

(4) For a participant other than an active participant, or for a beneficiary, the projected benefit is the accrued retirement benefit, or other plan benefit, under the

terms of the plan and the projected benefit is allocated to prior plan years.

(5) For an active participant, when valuing all benefits other than ancillary benefits that are not directly related to the accrued retirement benefit, the projected benefit related to a particular separation date is the benefit determined for the participant under the plan’s benefit formula(s) calculated using the projected compensation and the projection, under respective assumptions, of any other components that would be used in the calculation of the benefit on the expected separation date. The projected benefit at each expected separation date is allocated to the years of credited service as follows.

(a) The portion of the projected benefit allocated to the current plan year is determined as

(i) the benefit that would be determined for the participant under the plan’s benefit formula(s) calculated using the projected compensation, if applicable, and the projection, under respective assumptions, of any other components that would be used in the calculation of the benefit on the expected separation date, except taking into account only credited service through the end of the current plan year, minus

(ii) the benefit that would be determined for the participant under the plan’s benefit formula(s) calculated using the projected compensation, if applicable, and the projection, under respective assumptions, of any other components that would be used in the calculation of the benefit on the expected separation date, except taking into account only credited service through the beginning of the current plan year.

(b) The portion of the projected benefit allocated to prior plan years is the benefit determined for the participant under the plan’s benefit formulas calculated using the projected compensation, if applicable, and the projection, under respective assumptions, of any other components that would be used in the calculation of the benefit on the expected separation date, except taking into account only credited service through the beginning of the current plan year (i.e., the amount in subparagraph (a)(ii) above).

(c) Notwithstanding that the alloca-

tions in subparagraphs (a) and (b) only take into account credited service as of the beginning and end of the plan year, if a participant is expected to satisfy an eligibility requirement for a particular benefit that is being valued (e.g., subsidized early retirement benefit) as of an expected separation date, the amounts in subparagraphs (a) and (b), and in paragraph (6) below, must be determined as if the employee has satisfied the eligibility requirement.

(d) The portion of the projected benefit allocated to prior plan years may not be less than the participant's actual accrued benefit as of the beginning of the current plan year. In addition, the benefit determined as of the end of the current plan year in subparagraph (a)(i) above may not be less than the participant's estimated accrued benefit as of the end of the current plan year.

(6) For active participants, when valuing ancillary benefits that are not directly related to the accrued retirement benefit, the projected benefit related to a particular

separation date is the benefit determined for the participant under the plan's benefit formula(s) calculated using the projected compensation and the projection, under respective assumptions, of any other components that would be used in the calculation of the benefit on the expected separation date. The portion of the projected benefit allocated to the current plan year is the projected benefit at the expected separation date divided by the number of years of service the participant will have at such date. The portion of such projected benefit allocated to prior years of service is the projected benefit multiplied by a fraction, the numerator of which is the number of years of service at the beginning of the plan year, and the denominator of which is the number of years of service the participant will have at the expected separation date.

(7) The unfunded liability equals the total accrued liability less the actuarial value of plan assets. All present values are determined as of the valuation date.

(8) The following examples illustrate the application of the method.

(a) Example 1. The retirement benefit under the terms of a plan is equal to 1.3% of high 1-year compensation per year of service, but not less than the top-heavy minimum of 2% of high 5-year average compensation for each year the plan is top-heavy (not exceeding 20%), as required under § 416(c). Compensation under the plan is limited to \$100,000. The plan has been top-heavy only for the last 7 years. Employee E has 10 years of service at the beginning of the current plan year. E's compensation for that year is \$30,000. The compensation is assumed to increase at the rate of 5% compounded yearly. The particular benefit being valued is the early retirement benefit anticipated to commence at the expected separation date 7 years in the future (i.e., after completion of 17 years of service). At this separation date, the employee will be eligible for early retirement, and will have projected compensation of \$40,202, and projected high 5-year average compensation of \$36,552. The allocated benefits determined for Employee E at the beginning and end of the plan year, and on the separation date, are shown in the table below.

Allocated Benefit Determined Under Plan	Determined As of the		
	Beginning of Plan Year	End of Plan Year	Separation Date
(1) 1.3% Benefit Formula	\$5,226 <sup>1</sup>	\$5,749 <sup>1</sup>	\$8,885 <sup>3</sup>
(2) Top-Heavy Formula	\$5,117 <sup>2</sup>	\$5,848 <sup>2</sup>	\$7,310 <sup>3</sup>
(3) Allocated Benefit (greater of (1) and (2))	\$5,226	\$5,848	\$8,885

#### FOOTNOTES

<sup>1</sup>\$5,226 = \$40,202 x 1.3% x 10; \$5,749 = \$40,202 x 1.3% x 11

<sup>2</sup>\$5,117 = \$36,552 x 2.0% x 7; \$5,848 = \$36,552 x 2.0% x 8

<sup>3</sup>\$8,885 = \$40,202 x 1.3% x 17; \$7,310 = \$36,552 x 2.0% x 10

The benefit allocated to the current year is \$622 (\$5,848 - \$5,226), and the benefit allocated to prior years is \$5,226. In this case, the projected benefit at the separation date is based on the 1.3% benefit formula, and the current year's benefit allocation of the projected benefit results in an amount which is based on the 1.3% benefit formula at the beginning of the year and on the top-heavy formula at the end of the year.

(b) Example 2: Plan B is an accumulation plan within the meaning of § 1.401(a)(4)-12. The benefit formula under Plan B for each plan year is 1% of compensation for such year. The sum of the amounts for each of the years constitutes an employee's benefit. The accrued benefit at any date under Plan B is the benefit payable at normal retirement age for the years of service to date. Employee F has 3 years of service at the beginning of the year. The benefit being valued

is the normal retirement benefit payable at the normal retirement date (the date Employee F reaches normal retirement age). At normal retirement age, Employee F will have 20 years of service. Compensation is assumed to increase at a rate of 5% per year. Employee F's compensation was \$28,665, \$27,170, and \$26,000 for the prior year, the second prior year, and the third prior year, respectively. For valuation purposes, Employee F's compensation for the current year is assumed to be \$30,098. During the preceding plan year, Plan B was amended effective on the first day of the current plan year to provide that with respect to all prior plan years, the normal retirement benefit is updated to the greater of the benefit actually accumulated as of the beginning of the current plan year or 1% of the preceding year's compensation multiplied by the number of years of service prior to the beginning of the current plan year.

The benefit determined for Employee F, taking into account only credited service through the beginning of the current plan year under the plan's benefit formula is \$860 (the greater of (a) \$818 ((1% x \$26,000) + (1% x \$27,170) + (1% x \$28,665)), or (b) \$860 (1% x \$28,665 x 3)). Taking the amendment into account, the projected benefit payable at normal retirement age is \$8,637 (\$860 + (1% x \$30,098 x 25.84)), where 25.84 is the accumulation of \$1 payable at the end of the year for 17 years determined at 5% interest). For purposes of allocating the projected benefit, changes in compensation assumed for later plan years are not taken into account in accordance with the plan's benefit formula. The benefit allocated to the current plan year is \$301 ((860 + (1% x \$30,098)) - 860).

.02 Approval 2. Approval is granted for a change in funding method to the



level percent of compensation aggregate funding method described below.

(1) This approval applies only to plans which provide for compensation-related benefits.

(2) Under this method, the normal cost is calculated in the aggregate as the normal cost accrual rate multiplied by the total compensation of all active participants.

(a) The normal cost accrual rate is

(i) the total present value of future benefits of all participants and beneficiaries less adjusted assets, divided by

(ii) the total, for all active participants, of the present value of the compensation expected to be paid to each participant for each year of the participant's anticipated future service, determined as of the participant's attained age.

(b) For this purpose, the adjusted assets are equal to

(i) the actuarial value of the assets, plus

(ii) the sum of the outstanding balances of the amortization bases established on account of funding waivers under § 412(b)(2)(C), switchback to the regular funding standard under § 412(b)(2)(D), use of the shortfall method under § 1.412(c)(1)–2, and the transition under § 1.412(c)(3)–2(d), minus

(iii) the credit balance (or plus the funding deficiency), if any, in the funding standard account.

.03 Approval 3. Approval is granted for a change in funding method to the level dollar aggregate funding method described below.

(1) Under this method, the normal cost is calculated in the aggregate as the normal cost per active participant multiplied by the number of active participants.

(a) The normal cost per active participant is

(i) the total present value of future benefits of all participants and beneficiaries, less adjusted assets, divided by

(ii) the total, for all active participants, of the present value of an annuity of \$1 per year for every year of a participant's anticipated future service, determined as of the participant's attained age.

(b) For this purpose, the adjusted assets are equal to

(i) the actuarial value of the assets, plus

(ii) the sum of the outstanding bal-

ances of the amortization bases established on account of funding waivers under § 412(b)(2)(C), switchback to the regular funding standard under § 412(b)(2)(D), use of the shortfall method under § 1.412(c)(1)–2 of the regulations, and the transition under § 1.412(c)(3)–2(d), minus

(iii) the credit balance (or plus the funding deficiency), if any, in the funding standard account.

.04 Approval 4. Approval is granted for a change in funding method to the level percent of compensation individual aggregate funding method described below.

(1) This approval applies only for plans which provide for compensation-related benefits.

(2) This approval does not apply if the actuarial value of assets is less than the present value of benefits for inactive participants and beneficiaries, or if the amount in paragraph (3)(b)(i) is less than zero.

(3) Under this method, the normal cost is the sum of the individual normal costs for each active participant.

(a) The normal cost for an active participant is

(i) the present value of future benefits for the participant, less allocated adjusted assets, divided by

(ii) the ratio of (A) the present value of the compensation expected to be paid to the participant for each year of the participant's anticipated future service, determined as of the participant's attained age, to (B) the participant's current compensation.

(b) For this purpose, allocated adjusted assets are calculated as follows:

(i) First, the adjusted value of the assets is equal to:

(A) the actuarial value of the assets, plus

(B) the sum of the outstanding balances of the amortization bases established on account of funding waivers under § 412(b)(2)(C), switchback to the regular funding standard under § 412(b)(2)(D), use of the shortfall method under § 1.412(c)(1)–2, and the transition under § 1.412(c)(3)–2(d), minus

(C) the credit balance (or plus the funding deficiency), if any, in the funding standard account, minus

(D) any liabilities retained by the plan for any inactive participant or benefi-

ciary.

(ii) In the first year the method is used, the allocated adjusted value of the assets for an active participant is calculated by allocating the adjusted value of the assets in proportion to the present value of accrued benefits, or in proportion to the accrued liability determined under one of the immediate gain funding methods described in subsection .01 or .08.

(iii) For years subsequent to the first year in which the method is used, the adjusted value of the assets is allocated to an active participant in the proportion that

(A) the sum of the allocated adjusted assets and calculated normal cost as of the valuation date for the prior year for that active participant bears to

(B) the total of the amounts in (A) for all active participants.

.05 Approval 5. Approval is granted for a change in funding method to the level dollar individual aggregate funding method described below.

(1) This approval does not apply if the actuarial value of assets is less than the present value of benefits of inactive participants and beneficiaries, or if the amount in paragraph (2)(b)(i) is less than zero.

(2) Under this method, the normal cost is the sum of the individual normal costs for each active participant.

(a) The normal cost for an active participant is

(i) the present value of future benefits for the participant less allocated adjusted assets, divided by

(ii) the present value of an annuity of \$1 per year for every year of the participant's anticipated future service, determined as of the participant's attained age.

(b) For this purpose, allocated adjusted assets are calculated as follows:

(i) First, the adjusted value of the assets is equal to:

(A) the actuarial value of the assets, plus

(B) the sum of the outstanding balances of the amortization bases established on account of funding waivers under § 412(b)(2)(C), switchback to the regular funding standard under § 412(b)(2)(D), use of the shortfall method under § 1.412(c)(1)–2, and the transition under § 1.412(c)(3)–2(d), minus

(C) the credit balance (or plus the fund-



ing deficiency), if any, in the funding standard account, minus

(D) any liabilities retained by the plan for any inactive participant or beneficiary.

(ii) In the first year the method is used, allocated adjusted assets for an active participant is calculated by allocating the adjusted value of the assets in proportion to the present value of accrued benefits, or in proportion to the accrued liability determined under one of the immediate gain funding methods described in subsection .01 or .09.

(iii) For years subsequent to the first year in which the method is used, the adjusted value of the assets is allocated to an active participant in the proportion that

(A) the sum of the allocated adjusted assets and calculated normal cost as of the valuation date for the prior year for that active participant bears to

(B) the total of the amounts in (A) for all active participants.

.06 Approval 6. Approval is granted for a change in funding method to the level percent of compensation frozen initial liability funding method described below.

(1) This approval applies only for plans which provide for compensation-related benefits.

(2) Under this method, the normal cost is calculated in the aggregate, for every year the method is used including the first, as the normal cost accrual rate multiplied by the total compensation of all active participants.

(a) The normal cost accrual rate is

(i) the total present value of future benefits of all participants and beneficiaries less the sum of the actuarial value of assets and the unfunded liability, divided by

(ii) the total, for all active participants, of the present value of the compensation expected to be paid to each participant for each year of the participant's anticipated future service, determined as of the participant's attained age.

(b) As of the date of change, the unfunded liability is set equal to the unfunded accrued liability determined under the level percentage of compensation individual entry age normal funding method described in subsection .08.

(c) For years subsequent to the plan year of the change in method, the unfunded liability equals

(i) the unfunded liability for the prior

plan year, plus the normal cost for the prior plan year (the result adjusted with appropriate interest to the valuation date), minus the actual contribution(s) for the prior plan year (adjusted with appropriate interest to the valuation date), and

(ii) the unfunded liability is further increased (or decreased) by the amount of any base established on the valuation date which results from a plan amendment or a change in assumptions. Such bases are amortized over the period(s) described in § 412(b)(2)(B) or § 412(b)(3)(B), as applicable.

.07 Approval 7. Approval is granted for a change in funding method to the level dollar frozen initial liability funding method described below.

(1) Under this method, the normal cost is calculated in the aggregate, for every year the method is used including the first, as the normal cost per active participant multiplied by the number of active participants.

(a) The normal cost per active participant is

(i) the total present value of future benefits of all participants and beneficiaries less the sum of the actuarial value of assets and the unfunded liability, divided by

(ii) the total, for all active participants, of the present value of an annuity of \$1 per year for every year of a participant's anticipated future service, determined as of the participant's attained age.

(b) As of the date of change, the unfunded liability is set equal to the unfunded accrued liability determined under the level dollar individual entry age normal funding method described in subsection .09.

(c) For years subsequent to the plan year of the change in method, the unfunded liability equals

(i) the unfunded liability for the prior plan year, plus the normal cost for the prior plan year (the result adjusted with appropriate interest to the valuation date), minus the actual contribution(s) for the prior plan year (adjusted with appropriate interest to the valuation date), and

(ii) the unfunded liability is further increased (or decreased) by the amount of any base established on the valuation date which results from a plan amendment or a change in assumptions. Such bases are amortized over the period(s) described in § 412(b)(2)(B) or § 412(b)(3)(B), as applicable.

.08 Approval 8. Approval is granted for a change in funding method to the level percent of compensation individual entry age normal funding method described below.

(1) This approval does not apply if the alternative minimum funding standard account is used at any time within the 5-year period commencing with the first day of the plan year for which the change is made.

(2) This approval applies only for plans which provide for compensation-related benefits.

(3) Under this method, the normal cost is the sum of the individual normal costs for all active participants. For an active participant, the normal cost is the participant's normal cost accrual rate, multiplied by the participant's current compensation.

(a) The normal cost accrual rate equals

(i) the present value of future benefits for the participant, determined as of the participant's entry age, divided by

(ii) the present value of the compensation expected to be paid to the participant for each year of the participant's anticipated future service, determined as of the participant's entry age.

(b) In calculating the present value of future compensation, the salary scale must be applied both retrospectively and prospectively to estimate compensation in years prior to and subsequent to the valuation year based on the compensation used for the valuation.

(c) The accrued liability is the sum of the individual accrued liabilities for all participants and beneficiaries. A participant's accrued liability equals the present value, at the participant's attained age, of future benefits less, the present value at the participant's attained age of the individual normal costs payable in the future. A beneficiary's accrued liability equals the present value, at the beneficiary's attained age, of future benefits. The unfunded accrued liability equals the total accrued liability less the actuarial value of assets.

(d) Under this method, the entry age used for each active participant is the participant's age at the time he or she would have commenced participation if the plan had always been in existence under current terms, or the age as of which he or she first earns service credits for purposes of benefit accrual under the current terms

of the plan. Alternatively, the entry age may be determined as the age at the valuation date next following the time described in the preceding sentence.

.09 Approval 9. Approval is granted for a change in funding method to the level dollar individual entry age normal funding method described below.

(1) This approval does not apply if the alternative minimum funding standard account is used at any time within the 5-year period commencing with the first day of the plan year for which the change is made.

(2) Under this method, the normal cost is the sum of the individual normal costs for all active participants.

(a) For an active participant, the individual normal cost equals

(i) the present value of future benefits for the participant, determined as of the participant's entry age, divided by

(ii) the present value of an annuity of \$1 per year for every year of the participant's anticipated future service, determined as of the participant's entry age.

(b) The accrued liability is the sum of the individual accrued liabilities for all participants and beneficiaries. A participant's accrued liability equals the present value, at the participant's attained age, of future benefits, less the present value at the participant's attained age of the individual normal costs payable in the future. A beneficiary's accrued liability equals the present value, at the beneficiary's attained age, of future benefits. The unfunded accrued liability equals the total accrued liability less the actuarial value of the plan assets.

(c) Under this method, entry age used for each active participant is the participant's age at the time he or she would have commenced participation if the plan had always been in existence under current terms, or the age as of which he or she first earns service credits for purposes of benefit accrual under the current terms of the plan. Alternatively, the entry age may be determined as the age at the valuation date next following the time described in the preceding sentence.

.10 Approval 10. Approval is granted for a change in asset valuation method to fair market value as defined in § 1.412(c)(2)–1(c).

.11 Approval 11. Approval is granted for a change in asset valuation method to

the average value as defined in § 1.412(c)(2)–1(b)(7) (which does not have a phase-in), or to any alternative formulation that is algebraically equivalent to this average value. The asset value determined under the method will be adjusted to be no greater than 120% and no less than 80% of the fair market value defined in § 1.412(c)(2)–1(c).

For example, under § 1.412(c)(2)–1(b)(7), if the averaging period is five years, the average value is based on the fair market value of assets in the current year and the adjusted values of assets for the prior four years as provided in § 1.412(c)(2)–1(b)(8). An alternative formulation which is algebraically equivalent to this method is one in which the average value of assets is equal to the fair market value on the valuation date, minus decreasing fractions (4/5, 3/5, 2/5 and 1/5, in this example) of the appreciation and depreciation of the assets in each of the four preceding years. The stated averaging period may not exceed five (5) plan years.

.12 Approval 12. Approval is granted for a change in asset valuation method to the average value (as defined in § 1.412(c)(2)–1(b)(7)), modified to use the phase-in described below, or to any alternative formulation that is algebraically equivalent to this average value. The asset value determined under the method will be adjusted to be no greater than 120% and no less than 80% of the fair market value defined in § 1.412(c)(2)–1(c).

In the first year this method is used, the average value is calculated as in Approval 11, except that the adjusted values for all but the most recent prior year are replaced by the adjusted value for the most recent prior year. In the second year, the average is calculated as in Approval 11, except that the values for all but the most recent two prior years are replaced by the adjusted value for the second most recent prior year. This process is continued until values for all prior years in the averaging period are phased in. The stated averaging period may not exceed five (5) plan years.

.13 Approval 13. Approval is granted for a change in the valuation date to the day that is the first day of the plan year.

.14 Approval 14. Approval is granted to change the funding method used for valuing ancillary benefits to the funding method used to value retirement benefits,

if the prior method for valuing ancillary benefits had been the one-year term method. For this purpose, ancillary benefits are defined in § 1.412(c)(3)–1(f)(2) and include pre-retirement death and disability benefits.

.15 Approval 15. Approval is granted for a change in asset valuation method to the smoothed market value (without phase-in) described below, or to any alternative formulation that is algebraically equivalent to this smoothed value. The asset value determined under the method will be adjusted to be no greater than 120% and no less than 80% of the fair market value defined in § 1.412(c)(2)–1(c).

Under this method, the actuarial value of assets is equal to the market value of assets less a decreasing fraction (i.e.,  $(n-1)/n$ ,  $(n-2)/n$ , etc., where  $n$  equals the number of years in the smoothing period) of the gain or loss for each of the preceding  $n-1$  years. The stated smoothing period may not exceed five (5) plan years.

Under this method, a gain or loss for a year is determined by calculating the difference between the expected value of the assets for the year and the market value of the assets at the valuation date. The expected value of the assets for the year is the market value of the assets at the valuation date for the prior year brought forward with interest at the valuation interest rate to the valuation date for the current year plus contributions minus disbursements (i.e., benefits and expenses), all adjusted with interest at the valuation rate to the valuation date for the current year. If the expected value is less than the market value, the difference is a gain. Conversely, if the expected value is greater than the market value, the difference is a loss.

For example, if the smoothing period is five years, the actuarial value of the assets will be the market value of the plan's assets, with gains subtracted or losses added at the rates described as follows:

- (i) 4/5 of the prior year's gain or loss
- (ii) 3/5 of the second preceding year's gain or loss
- (iii) 2/5 of the third preceding year's gain or loss
- (iv) 1/5 of the fourth preceding year's gain or loss

.16 Approval 16. Approval is granted for a change in asset valuation method to

the smoothed market value (with phase-in) described below, or to any alternative formulation that is algebraically equivalent to this smoothed value. The asset value determined under the method will be adjusted to be no greater than 120% and no less than 80% of the fair market value defined in § 1.412(c)(2)–1(c).

In the first year this method is used the actuarial value of assets is equal to the market value as of the valuation date. In each subsequent year, the smoothed value is calculated in the same manner as in Approval 15, except that the only gains or losses recognized are those occurring in the year of the change and in later years. The stated smoothing period may not exceed five (5) plan years.

.17 Approval 17. Approval is granted for a change in asset valuation method to the average value (as defined in § 1.412(c)(2)–1(b)(7)), modified to use the alternative phase-in as described below, or to any alternative formulation that is algebraically equivalent to this average. The asset value determined under the method will be adjusted to be no greater than 120% and no less than 80% of the fair market value defined in § 1.412(c)(2)–1(c).

In the first year this method is used, the actuarial value of assets is equal to the market value. In the second year, the average value is calculated in the same manner as in Approval 11, except that the averaging period is two years. In the third year, the average value is calculated in the same manner as in Approval 11, except that the averaging period is three years. This process continues until the stated averaging period (not to exceed five years) is reached.

#### SECTION 4. SPECIAL APPROVALS

.01 Approvals to Remedy Unreasonable Allocation of Costs.

(1) If a plan uses an individual aggregate funding method and an individual normal cost becomes negative for a participant, approval is granted to re-allocate excess assets to other participants in proportion to the present value of accrued benefits, or in proportion to the accrued liability determined under the immediate gain funding method described in section 3.01, section 3.08 (only if the normal cost for a participant is determined as a level percent of compensation under the plan's method),

section 3.09 (only if the normal cost for a participant is determined as a level dollar amount under the plan's method) or in proportion to the allocated adjusted assets prior to the reallocation. For this purpose, excess assets are defined as the excess, if any, of the assets currently allocated to the participant over the present value of the participant's future benefits.

(2) If a plan uses a spread gain funding method which establishes an initial unfunded liability using an immediate gain funding method (e.g., frozen initial liability or attained age normal), and the normal cost and/or unfunded liability become(s) negative, then, in the case where the normal cost under the plan's method is determined as a level percentage of compensation, approval is granted to reestablish the unfunded liability under the funding method described in section 3.01 if the unfunded liability was originally established under the unit credit method, or under the funding method described in section 3.08 if the unfunded liability was originally established under the entry age normal method. See Rev. Rul. 81–213, 1981–2 C.B. 101, regarding whether a funding method is a spread gain funding method or an immediate gain funding method. In the case where the normal cost under the plan's method is determined as a level dollar amount, approval is granted to reestablish the unfunded liability under the funding method described in section 3.01 if the unfunded liability was originally established under the unit credit method, or under the funding method described in section 3.09 if the unfunded liability was originally established under the entry age normal method. If the reestablished unfunded liability is less than zero, approval is granted to change to the aggregate funding method described in section 3.02 (if the normal cost under the plan's method is determined as a level percent of compensation), or section 3.03 (if the normal cost under the plan's method is determined as a level dollar amount).

(3) If a plan that uses a spread gain funding method which establishes an initial unfunded liability using an immediate gain funding method (e.g., frozen initial liability or attained age normal), becomes fully funded within the meaning of § 412(c)(6) (without taking into account § 412(c)(7)(A)(i)(I)), approval is granted to

change to the aggregate funding method described in section 3.02 (if the normal cost under the plan's method is determined as a level percent of compensation), or section 3.03 (if the normal cost under the plan's method is determined as a level dollar amount).

(4) If a plan uses an individual aggregate funding method and the actuarial value of plan assets is less than the present value of benefits for inactive participants and beneficiaries, or if the actuarial value of the assets, plus the sum of the outstanding balances of the amortization bases established on account of funding waivers under § 412(b)(2)(C), switchback to the regular funding standard under § 412(b)(2)(D), use of the shortfall method under § 1.412(c)(1)–2, and the transition under § 1.412(c)(3)–2(d), minus the credit balance (or plus the funding deficiency), if any, in the funding standard account, minus any liabilities retained by the plan for any inactive participant or beneficiary is less than zero, approval is granted to change to the aggregate funding method described in section 3.02 (if the normal cost under the plan's method is determined as a level percent of compensation), or section 3.03 (if the normal cost under the plan's method is determined as a level dollar amount).

(5) If a plan provides that no participant may accrue a benefit as of a date that is no later than the first day of the plan year, approval is granted to change to the unit credit method described in section 3.01.

.02 Approval for Change in Funding Method for Fully Funded Terminated Plans.

(1) For a plan year during which a plan is terminated, the funding method may be changed to a method described in paragraph (2) provided that the conditions set forth in paragraph (3) are satisfied. As part of the change in method, the valuation date may be changed to the date of termination or the first day of the plan year, and the asset valuation method may be changed to value plan assets at fair market value.

(2) A method is described in this subsection if the normal cost for the plan year is the present value of the benefits accruing in the plan year, and the accrued liability is the present value of the benefits accrued as of the first day of the plan year.

(3) The conditions in this subsection are satisfied if:

(a) As of the date of termination, the fair market value of the assets of the plan (exclusive of contributions receivable) is not less than the present value of all benefit liabilities (whether or not vested), and

(b) if applicable, a timely notice of intention to terminate was filed with the Pension Benefit Guaranty Corporation (PBGC).

#### .03 Approval for Takeover Plans.

(1) Approval is granted by this paragraph for a change in funding method where all the conditions set forth in paragraphs (2) through (4) are satisfied.

(2) There has been both a change in the enrolled actuary for the plan and a change in the business organization providing actuarial services to the plan.

(3) The method used by the new actuary is substantially the same as the method used by the prior actuary, and is consistent with the information contained in the prior actuarial valuation reports or prior Schedules B of Form 5500. Also, the method used by the new actuary must be applied to the prior year (using the assumptions of the prior actuary) and the absolute value of each resulting difference in normal cost, accrued liability (if directly computed under the method) and actuarial value of assets, that is attributable to the change in cost method, does not exceed five percent (5%) of the respective amounts calculated by the prior actuary for that year.

(4) The change in costs due to the change in method is treated in the same manner as an experience gain or loss, unless the actuarial assumptions are being changed, in which case the change in method is treated as part of the change in assumptions.

#### .04 Approval for Change in Valuation Software

(1) Approval is granted for a change in method that results from a change in valuation software where all the conditions set forth in paragraphs (2) through (8) are satisfied. Note that certain changes in valuation software may not constitute changes in funding method. For example, the update of the valuation software to incorporate the actual social security taxable wage base for the current year is not a change in funding method. Also, if all of the results of each specific computation are the same after the change in valuation software, there is no change in funding method.

(2) There has been a modification to the computations in the valuation software or a different valuation software system has been used. Examples of modifications to the computations in the valuation software include a change from commutation functions to direct calculation of actuarial values, changes in the rounding conventions or changes to correct errors or inefficiencies in the computations. Examples of using a different valuation software system include a change in the spreadsheet software (e.g., Lotus 1-2-3 to Excel) or a change in the actuarial software vendor.

(3) The underlying method is unchanged and is consistent with the information contained in the prior actuarial valuation reports and prior Schedules B of Form 5500.

(4) The modification to the computations in the valuation software or the use of a different valuation software system is designed to produce results that are no less accurate than the results produced prior to the modification or change.

(5) The net charge to the funding standard account for the year (or for the prior year) determined using the new software does not differ from the net charge to the funding standard account determined using the old software (all other factors being held constant) by more than two percent (2%).

(6) A change in valuation software requiring approval was not made for the prior plan year.

(7) Section 4.04 (Approval for Takeover Plans) of this revenue procedure is not applicable to the change.

(8) The effect of the change in method is treated in the same manner as an experience gain or loss, unless the actuarial assumptions are being changed, in which case the effect of the change in method is treated as part of the effect of the change in assumptions.

#### .05 Approval for *De Minimis* Mergers

(1) Approval is granted for a change in method in connection with a merger described in paragraph (2) where the procedures set forth in paragraphs (3) through (5) below are followed.

(2) The merger involves the merger of a smaller plan (within the meaning of § 1.414(l)-1(h)(1)) and a larger plan (within the meaning of § 1.414(l)-1(h)(1)). For purposes of this paragraph (2), the

rules of §§ 1.414(l)-1(h)(2), 1.414(l)-1(h)(3), and 1.414(l)-1(h)(4) apply in determining whether a merger is *de minimis*.

(3) For the period from the beginning of the plan year of the smaller plan to the date of the merger, the charges and credits to the funding standard account for the smaller plan are determined without regard to the merger. If that period is less than a full 12-month plan year, the charges and credits to the funding standard account for the smaller plan for this period are ratably adjusted using the principles of Rev. Rul. 79-237, 1979-2 C.B. 190, in the same manner as if the date of the merger was the date of plan termination of the smaller plan. The deductible limit under § 404 for contributions to the smaller plan is determined by treating the period from the beginning of the plan year to the date of merger as a short plan year and following the procedure set forth in section 5 of Rev. Proc. 87-27, 1987-1 C.B. 769. Schedule B of Form 5500 is filed for the smaller plan for the period from the beginning of the plan year of the smaller plan to the date of the merger. Any contributions made for the smaller plan after the date of the merger, but not later than 8 1/2 months after the date of the merger, are credited to the funding standard account of the smaller plan for this period. For purposes of applying § 4971(b) (but not § 4971(a)) with respect to the smaller plan, any funding deficiency that existed for the smaller plan is considered corrected as of the date of merger.

(4) If the valuation date for the larger plan for the plan year in which the merger occurs precedes the date of the merger, the charges and credits to the funding standard account for the larger plan for that plan year are determined without regard to the merger. Consequently, Schedule B of Form 5500 for the plan year of the larger plan in which the merger occurs is filed without regard to the merger in such a case. Similarly, the deductible limit determined under § 404 with respect to the plan year of the larger plan in which the merger occurs is determined without regard to the merger.

(5) For the actuarial valuation of the larger plan as of the valuation date coincident with or next following the date of the merger, the funding method (including asset valuation method) used is that for the larger plan, and the funding method (including asset valuation method) used



for the smaller plan is disregarded. The charges and credits to the funding standard account for the larger plan are determined by treating the net effect of the change in assets and liabilities due to the merger in the same manner as any other gain or loss experienced by the larger plan. Consequently, any amortization bases, credit balances, or funding deficiencies with respect to the smaller plan are disregarded for purposes of applying § 412 and § 4971 with respect to the larger plan.

**.06 Approval for Certain Mergers With Same Plan Year And Merger Date of First or Last Day of Plan Year**

(1) Approval is granted for a change in method that results from a merger of one plan with another plan in a given plan year where all the conditions set forth in paragraphs (2) through (6) are satisfied, and the procedures set forth in paragraphs (7) through (13) are followed.

(2) The merger is not a *de minimis* merger within the meaning of § 1.414-1(l)–1(h).

(3) The funding method (without regard to the asset valuation method) used for each of the plans is a method described in section 3.

(4) Both plans have the same plan year and a valuation date that is either the first or last day of the plan year.

(5) The date of the merger is either the first day of the plan year or the last day of the plan year of the two plans.

(6) In a case in which the date of the merger is the first day of the plan year, neither plan has a funding deficiency for the prior plan year. In a case in which the date of the merger is the last day of the plan year, neither plan has a funding deficiency for the plan year of the merger (after taking into account contributions made after the date of the merger as provided in paragraph (13) below).

(7) If the date of the merger is the first day of the plan year, the minimum funding standard of § 412 and the deductible limit of § 404 are determined for the merged plan for the entire plan year in which the merger occurs in the manner provided in paragraphs (8), (9), (10), (11), and (12) below. Consequently, for the plan year in which the merger occurs, only one Schedule B of Form 5500 is filed for the merged plan in such a case.

(8) If the same asset valuation method

(in all respects) is used for each of the two plans, the asset valuation method of the merged plan is that method. If the same asset valuation method (in all respects) is not used for each of the two plans (for example, the smoothing period is three years for one of the plans and five years for the other plan), the asset valuation method used for the merged plan must be an asset valuation method described in section 3.

(9) If the funding method (without regard to the asset valuation method) used for each of the two plans is the same, that funding method is continued for the plan after the merger. If the funding method (without regard to the asset valuation method) used for each of the two plans is not the same, then the funding method used for the ongoing plan is continued after the merger. For this purpose, the ongoing plan is the plan as designated by the plan administrator (within the meaning of § 414(g)), whose name and plan number will continue to be reported on Schedule B of Form 5500 for years after the merger. The funding method used for the plan which is not the ongoing plan is disregarded.

(10) An experience gain or loss is determined separately for each of the two plans, for the period prior to the date of the merger, without regard to the merger and any associated changes (i.e., changes in funding method, actuarial assumptions, or plan benefits). The preceding sentence applies only to the extent that an experience gain or loss would have been determined under the methods used for the plans prior to the merger.

(11) All amortization bases that were maintained for the two plans continue to be maintained for the merged plan to the extent they would be maintained under the funding method used for the merged plan. The credit balances, if any, of each of the two plans from the prior year are carried forward to the current plan year and combined.

(12) If an unfunded liability is determined under the funding method used for the ongoing plan, it must be determined after any change in actuarial assumptions and methods (including a change in asset valuation method pursuant to paragraph (8)). In the case of such a funding method that is a spread gain method, the unfunded liability is redetermined in the same man-

ner that the unfunded liability was originally determined for the ongoing plan. Therefore, the amortization base established pursuant to the rules of section 5.01(2) will reflect any change of actuarial assumptions and methods. For purposes of this paragraph, a spread gain method is any method that does not directly calculate an accrued liability. See Rev. Rul. 81–13 for whether a funding method directly calculates an accrued liability.

(13) If the date of the merger is the last day of the plan year, the minimum funding standard under § 412 and the deductible limit under § 404 for each of the plans for the plan year in which the merger occurs are determined without regard to the merger. Consequently, separate Schedules B of Form 5500 are filed for the plans for the plan year in which the merger occurs without regard to the merger in such a case. Any contribution for the plan year that is made to the trust after the date of the merger may be credited on either of the Schedules B provided that the contribution is made for such plan within the period described in § 412-(c)(10). For the plan year following the plan year in which the merger occurs, the minimum funding standard and the deductible limit are determined for the plan after the merger by following the procedures set forth in paragraphs (8), (9), (10), (11) and (12) above as if the merger occurred on the first day of such following plan year.

**.07 Approval for Certain Mergers With Transition Period No More Than 12 Months**

(1) Approval is granted for a change in method that results from a merger of one plan with another plan where all the conditions set forth in paragraphs (2) through (7) are satisfied, and the procedures set forth in paragraphs (8) through (15) are followed.

(2) The merger is not a *de minimis* merger within the meaning of § 1.414-1(l)–1(h).

(3) The funding method (without regard to the asset valuation method) used for each of the plans is a method described in section 3.

(4) Each of the plans, prior to the merger, had a valuation date that was the first day of the plan year.

(5) The plans do not have the same plan year, or, if both plans have the same plan

year, the date of the merger is not the first day or the last day of the plan year.

(6) The period from the first day of the plan year of the plan that is not the ongoing plan to the end of the plan year of the ongoing plan (as defined in section 4.06(9) above) in which the merger takes place (the “transition period”) does not exceed 12 months.

(7) The ongoing plan does not have a funding deficiency for the prior plan year, and the plan that is not the ongoing plan does not have a funding deficiency for the short plan year described in (8) below.

(8) For the period from the beginning of the plan year of the plan that is not the ongoing plan to the date of the merger (the “short plan year”), the charges and credits to the funding standard account for such plan are determined without regard to the merger. For the short plan year, the charges and credits to the funding standard account for that plan are ratably adjusted using the principles of Rev. Rul. 79–237 in the same manner as if the date of the merger was the date of plan termination of that plan, and a Schedule B of Form 5500 is filed for the short plan year. Any contributions made for that plan after the date of the merger, but not later than 8 1/2 months after the date of the merger, are credited to the funding standard account of that plan for the short plan year.

(9) Charges and credits attributable to the plan that is not the ongoing plan for the period, if any, from the date of the merger to the end of the plan year of the ongoing plan (the “interim period”) are determined without regard to the merger as set forth in this paragraph. Accordingly, the charges and credits are determined based upon the funding method, actuarial assumptions, and valuation results used for purposes of paragraph (8) above, and are ratably adjusted to reflect the length of the interim period. Such charges and credits should include interest to reflect the period from the valuation date (of the plan that is not the ongoing plan) to the date of the merger, as well as interest for the interim period. The credit balance, if any, at the end of the short plan year described in paragraph (8) above is carried forward to the beginning of the interim period.

(10) Unless the date of the merger is the first day of the plan year of the ongoing plan, the funding standard account for the ongoing plan for the plan year in

which the merger occurs is determined in steps. In the first step the funding standard account for the ongoing plan is determined without regard to the merger. In the second step, charges and credits attributable to the plan that is not the ongoing plan are determined for the interim period as described in paragraph (9) above. In the third step the charges and credits from the first two steps are combined in a manner similar to the treatment for separate plans under § 413(c)(4)(A) except that the credit balance or funding deficiency for each plan at the end of the year are combined to determine an overall credit balance or funding deficiency. Schedule B of Form 5500 is filed for the ongoing plan for the plan year in which the merger occurred with the combined entries to the funding standard account as described above. The other entries on the Schedule B (e.g. lines dealing with accrued liability) should be those for the ongoing plan without regard to the merger.

(11) For the plan year of the ongoing plan following the plan year in which the merger occurs the funding method for the ongoing plan is determined in accordance with the rules set forth in paragraphs (11), (12), and (13). If the same asset valuation method (in all respects) is used for each of the two plans, the asset valuation method of the merged plan is that method. If the same asset valuation method (in all respects) is not used for each of the two plans (for example, the smoothing period is three years for one of the plans, and five years for the other plan), the asset valuation method used for the merged plan must be an asset valuation method described in section 3. If the funding method (without regard to the asset valuation method) used for each of the two plans is the same, that funding method is continued for the plan after the merger. If the funding method (without regard to the asset valuation method) used for each of the two plans is not the same, then the funding method used for the ongoing plan is continued after the merger. The funding method used for the plan which is not the ongoing plan is disregarded.

(12) An experience gain or loss is determined separately for each of the two plans, for the period prior to the valuation date for the plan year following the plan year in which the merger occurred, without regard to the merger and any associ-

ated changes (i.e., changes in funding method, actuarial assumptions, or plan benefits). The preceding sentence applies only to the extent that an experience gain or loss would have been determined under the methods used for the plans prior to the merger.

(13) All amortization bases that were maintained for the two plans continue to be maintained for the ongoing plan to the extent they would be maintained under the funding method used for the ongoing plan. If an unfunded liability is determined under the funding method used for the ongoing plan, it must be determined after any change in actuarial assumptions and methods (including a change in asset valuation method pursuant to paragraph (12)). In the case of a funding method that is a spread gain method, the unfunded liability is redetermined in the same manner that the unfunded liability was originally determined for the ongoing plan. Therefore, the amortization base established pursuant to the rules of section 5.01(2) will reflect any change of actuarial assumptions and methods. For purposes of this paragraph, a spread gain method is any method that does not directly calculate an accrued liability. See Rev. Rul. 81–13 for whether a funding method directly calculates an accrued liability.

(14) The deductible limit under § 404 for the plan that is not the ongoing plan for the short plan year is determined, without regard to the merger, following the procedures set forth in section 5 of Rev. Proc. 87–27. The deductible limit under § 404 for the plan that is the ongoing plan is determined for the plan year in which the merger occurs as the sum of the limit determined for the plan without regard to the merger plus the limit determined with respect to the plan that is not the ongoing plan for the interim period described in paragraph (9) above.

(15) If the date of the merger is the first day of the plan year of the ongoing plan, the minimum funding standard and the deductible limit under § 404 are determined under this paragraph (15). The minimum funding standard and deductible limit under § 404 are determined for the short plan year as described in paragraphs (8) and (14) above as if the merger occurred on the last day of the preceding plan year of the ongoing plan.

However, as there is no interim period, the calculations described in paragraphs (9) and (10) are not made. Instead, the minimum funding standard and deductible limit under § 404 for the plan year of the merger will fully reflect the merger in the manner described in paragraphs (11), (12), and (13).

(16) The following example illustrates the application of this subsection.

(a) Plan A has a plan year that begins on October 1 and ends on the following September 30. The valuation date for Plan A is October 1, the first day of the plan year.

(b) Plan B has a plan year that begins on July 1 and ends on the following June 30. The valuation date for Plan B is July 1, the first day of the plan year.

(c) Plan A is merged into Plan B on April 1, 2001.

(d) An actuarial valuation was made with respect to Plan A as of October 1, 2000, for the plan year commencing October 1, 2000, using the entry age normal method as described in section 3.09 with the actuarial value of the assets determined using the smoothing method described in section 3.15. The valuation interest rate for Plan A is 6 percent. The relevant valuation results are as follows: the normal cost equals \$5,000; the unfunded accrued liability equals \$50,000; the credit balance from the prior year equals \$10,000; the amortization charges equals \$6,938; and the outstanding balance of amortization bases equal \$60,000. Plan A has no unfunded current liability. No contribution was made to Plan A for the short plan year from October 1, 2000, through April 1, 2001.

(e) An actuarial valuation was made with respect to Plan B as of July 1, 2000, for the plan year commencing July 1, 2000, using the entry age normal method as described in section 3.08 with the actuarial value of the assets determined as the fair market value of the assets. The valuation interest rate for Plan B is 8 percent. The relevant valuation results are as follows: the normal cost equals \$8,000; the unfunded accrued liability equals \$101,000; the credit balance from the prior year equals \$19,000; the amortization charges equal \$11,428; and the outstanding balance of amortization bases equals \$120,000. Plan B has no unfunded current liability.

(f) For Plan A, the period from October 1, 2000, to April 1, 2001, is treated as a short plan year for purposes of § 412. The charges and credits to the funding standard are determined based upon the October 1, 2000, actuarial valuation without regard to the merger and are ratably adjusted to reflect the short plan year from October 1, 2000, to April 1, 2001. A Schedule B of Form 5500 is filed for the short plan year with the relevant entries for the funding standard account reported as follows: the normal cost is \$2,500 (1/2 times \$5,000), the amortization charge is \$3,469 (1/2 times \$6,938), and the interest on the normal cost and amortization charge is \$176 (for the period from October 1, 2000, through April 1, 2001). Thus, the total charges are \$6,145. The credits to the funding standard account that are reported on the Schedule B are \$10,295 representing the prior year credit balance of \$10,000 plus \$295 interest for the short plan year. As a re-

sult, a credit balance of \$4,150 (\$10,295 less \$6,145) is reported on the Schedule B as of April 1, 2001.

(g) For Plan B, the minimum funding standard for the plan year beginning July 1, 2000, is determined in steps as described in paragraph (10) above.

First, the minimum funding standard is determined for Plan B without regard to the merger using the July 1, 2000, actuarial valuation. Thus, the normal cost would be \$8,000, the amortization charge would be \$11,428, and interest on these amounts (using the 8 percent interest rate) would be \$1,554, and the total charges would be \$20,982. The credits (without regard to employer contributions) would be the credit balance of \$19,000 plus interest (at 8 percent) of \$1,520 for total credits of \$20,520. Accordingly, Plan B would have a funding deficiency of \$462 (\$20,982 minus \$20,520) if there were no employer contributions and the merger was disregarded.

Second, charges and credits attributable to Plan A are determined for the interim period (from April 1, 2001 (the date of the merger) to June 30, 2001 (the end of the plan year of the ongoing plan in which the merger occurs)). The charges consist of a normal cost of \$1,287 (3/12 of \$5,000 adjusted for one half years interest at 6 percent), an amortization charge of \$1,786 (3/12 of \$6,938 adjusted for one half years interest at 6 percent), plus interest of \$45 (for the interim period at 6 percent) for total charges of \$3,118. The credits (without regard to employer contributions) consist of the credit balance of \$4,150 (from the Schedule B for the short plan year from October 1, 2000, to April 1, 2001) plus interest (at 6 percent for the interim period) of \$61 for total credits of \$4,211. Accordingly, for the interim period from April 1, 2001, to June 30, 2001, the charges and credits attributable to Plan A would result in a credit balance of \$1,093 (the excess of \$4,211 over \$3,118) if there were no employer contribution and the merger was disregarded.

Third, the charges and credits for the first two steps are combined except that the credit balance or funding deficiency that were separately determined at the end of the year are combined to determine an overall credit balance or funding deficiency. Thus, the charges reported on the 2000 Schedule B for Plan B would consist of a normal cost of \$9,287 (\$8,000 plus \$1,287), an amortization charge of \$13,214 (\$11,428 plus \$1,786), interest charge of \$1,599, and total charges of \$24,100 (\$20,982 plus \$3,118). The credits reported on the 2000 Schedule B for Plan B would consist of a prior year credit balance of \$23,150 (\$19,000 plus \$4,150), interest credits of \$1,581 (\$1,520 plus \$61), and total credits of \$24,731 (\$20,520 plus \$4,211). The credit balance reported on the 2000 Schedule B as of June 30, 2001, would be \$631 (\$1,093 minus \$462).

(h) With the July 1, 2001, actuarial valuation for Plan B, the funding method for the plan as merged is the entry age normal method with the actuarial value of the assets determined using a method described in section 3. An amortization base is established pursuant to section 5 to reflect the change in funding method.

.08 Approval for Other Mergers With Transition Period More Than 12 Months

(1) Approval is granted for a change in

method that is otherwise described in section 4.07 (except that the transition period described in section 4.07(6) exceeds 12 months) if the procedures set forth in paragraphs (2) through (6) are followed. If, however, the date of the merger is the first day of the plan year of the ongoing plan, the merger is treated as occurring on the day before the first day of the plan year of the ongoing plan. In such a case, the length of the transition period would be less than 12 months, and the rules of section 4.07 apply.

(2) For the period from the beginning of the plan year of the plan that is not the ongoing plan to the date of the merger (the "short plan year"), the charges and credits to the funding standard account for that plan are determined without regard to the merger. For the short plan year, the charges and credits to the funding standard account for that plan are ratably adjusted using the principles of Rev. Rul. 79-237 in the same manner as if the date of the merger was the date of plan termination of that plan, a Schedule B of Form 5500 is filed for that plan for the short plan year. Any contributions made for that plan after the date of the merger, but not later than 8 1/2 months after the date of the merger, are credited to the funding standard account of that plan for the short plan year.

(3) Charges and credits attributable to the plan that is not the ongoing plan for the period from the date of the merger to the end of the plan year of the plan that is the ongoing plan (the "interim period") are determined without regard to the merger as set forth in this paragraph (3). Accordingly, the charges and credits are determined based upon the funding method, actuarial assumptions, and valuation results used for purposes of paragraph (2) above.

(a) For the period from the date of the merger to the date that would have been the end of the plan year of the plan that is not the ongoing plan had there been no merger (the "first partial period"), the charges and credits to the funding standard account are determined by ratably adjusting the charges and credits determined under paragraph (2) above to reflect the length of the first partial period. Such charges and credits should include interest to reflect the period from the valuation date (of the plan that is not the on-



going plan) to the date of the merger, as well as interest for the interim period. The credit balance at the end of the short plan year described in paragraph (2) above is carried forward to the beginning of the first partial period.

(b) For the period from the date that would have been the end of the plan year of the plan that is not the ongoing plan had there been no merger to the end of the plan year of the ongoing plan in which the merger occurs (the “second partial period”), the charges and credits to the funding standard account are determined based upon the expected normal cost amortization charge, and amortization credit from the valuation used for purposes of paragraph (2) above, and are ratably adjusted to reflect the length of the second partial period. Such charges and credits should include interest for the second partial period. In addition, if the funding method used for the plan that is not the ongoing plan is a funding method that directly calculates an accrued liability within the meaning of Rev. Rul. 81-13, an amortization base is developed to reflect the gain or loss with respect to assets for the short plan year by comparing the expected and actual value of the assets. For this purpose, the expected value of the assets is computed as the market value of the assets determined for purposes of paragraph (2), plus contributions made for the short plan year described in paragraph (2), minus disbursements (i.e., benefit payments and expenses determined on either an actual or expected basis), with all items adjusted for expected interest at the valuation rate for the period to the date of the merger. The actual value of the assets is set to the market value of the assets of the plan that is not the ongoing plan (that become part of the assets of the ongoing plan) on the date of the merger. The amortization charge or credit (whichever is the case) is determined for such base and is ratably adjusted to reflect the length of the interim period.

(4) The funding standard account for the ongoing plan for the plan year in which the merger occurs is determined in steps. In the first step the funding standard account for the ongoing plan is determined without regard to the merger. In the second step, the funding standard account for the plan that is not the ongoing plan is determined for the interim period

by adding together the charges and credits for the first and second partial periods described in paragraph (3) above. In the third step the charges and credits from the first two steps are combined in a manner similar to the treatment for separate plans under § 413(c)(4)(A) except that the credit balance or funding deficiency for each plan at the end of the year are combined to determine an overall credit balance or funding deficiency. Schedule B of Form 5500 is filed for the ongoing plan for the plan year in which the merger occurred with the combined entries to the funding standard account as described above. The other entries on the Schedule B (e.g., lines dealing with accrued liability) should be those for the ongoing plan without regard to the merger.

(5) For the plan year following the plan year in which the merger occurs the funding method for the ongoing plan is determined in accordance with the rules in paragraphs (11), (12), and (13) of section 4.07.

(6) The deductible limit under § 404 for the plan that is not the ongoing plan for the short plan year is determined, without regard to the merger, following the procedures set forth in section 5 of Rev. Proc. 87-27. The deductible limit under § 404 for the plan that is the ongoing plan is determined for the plan year in which the merger occurs as the sum of the limit determined for the plan without regard to the merger plus the limit determined with respect to the plan that is not the ongoing plan for the interim period.

(7) The following example illustrates the application of this subsection. The facts are the same as in the example in section 4.07(16) except that the plan year of Plan B is the calendar year and the valuation date is January 1, 2001. Additional facts are that the market value of the assets of Plan A as of the valuation date of October 1, 2000, is \$800,000, the market value of the assets of Plan A at the date of the merger is \$820,000, and there are no disbursements expected from Plan A during this period.

(a) For Plan A, for the period from October 1, 2000, through April 1, 2001, is treated as a short plan year. The funding standard account for this period is determined as shown in section 4.07(16)(f). Thus, there is a credit balance of \$4,150 as of the end of the short period.

(b) For Plan B, the minimum funding standard for the plan year beginning January 1, 2001, is determined in steps as described in paragraph (4) above.

First, the minimum funding standard is determined for Plan B without regard to the merger using the January 1, 2001, actuarial valuation. Thus, the normal cost would be \$8,000, the amortization charge would be \$11,428, the interest on these amounts (using the 8 percent interest rate) would be \$1,554, and the total charges would be \$20,982. The credits (without regard to employer contributions) would be the credit balance of \$19,000 plus interest (at 8 percent) of \$1,520 for total credits of \$20,520. Accordingly, Plan B would have a funding deficiency of \$462 (\$20,982 minus \$20,520) if there were no employer contributions and the merger was disregarded.

Second, charges and credits are determined for Plan A for the interim period (from April 1, 2001 (the date of the merger) to December 31, 2001 (the end of the plan year of the ongoing plan in which the merger occurs)) by adding together the charges and credits for the first and second partial periods. For the first partial period, the charges consist of a normal cost of \$2,574 (6/12 of \$5,000 adjusted for one half years interest at 6 percent), an amortization charges of \$3,572 (6/12 of \$6,938, with one half years interest at 6 percent) plus interest of \$275 (for the period from April 1, 2001, to December 31, 2001). The credits consist of the credit balance of \$4,150 (from the Schedule B for the short plan year from October 1, 2000, to April 1, 2001) plus interest (at 6 percent for the period from April 1, 2001, to December 31, 2001) of \$185 for total credits of \$4,336. For the second partial period, the charges consist of a normal cost of \$1,250 (3/12 of \$5,000), amortization charges of \$2,348 (3/12 of \$6,938 plus 9/12 of \$818) plus interest of \$71 (which includes interest on 9/12 of \$818 for the period from April 1, 2001, to December 31, 2001). As part of this calculation, an amortization base of \$3,650 is established to represent the asset loss from October 1, 2000, to April 1, 2001 (determined as expected assets of \$823,650 less actual assets of \$820,000). The amortization charge for this base is \$818. There are no amortization credits for the second partial period.

Third, the charges and credits for the first two steps are combined except that the credit balance or funding deficiency for each plan at the end of the year are combined to produce an overall credit balance or funding deficiency. Thus, the charges reported on the 2001 Schedule B for Plan B would consist of a normal cost of \$11,824 (\$8,000 plus \$2,574 plus \$1,250), amortization charges of \$17,347 (\$11,428 plus \$3,572 plus \$2,347), interest of \$1,900 (\$1,554 plus \$275 plus \$71) for total charges of \$31,071. The credits reported on the 2001 Schedule B (without regard to employer contributions) would be a prior year credit balance of \$23,150 (\$19,000 plus \$4,150), interest credits of \$1,705 (\$1,520 plus \$185), and total credits of \$24,856. The funding deficiency reported on the 2001 Schedule B as of December 31, 2001, would be \$6,216 (\$462 plus \$5,753) if there were no employer contributions for the plan year.

## SECTION 5. GENERAL RULES RELATING TO FUNDING METHODS

Approval for a change to any method in this revenue procedure does not apply un-



less the provisions of sections .01 through .03 are satisfied.

**.01 Amortization Bases.**

(1) Continued Maintenance of Waiver, Shortfall, Five-Year Alternative Switchback, and Transition Bases. In the case of a plan which, prior to a change in funding method, has a funding waiver base described in § 412(b)(2)(C), a base due to a switchback to the regular funding standard account described in § 412(b)(2)(D), a shortfall base described in § 1.412(c)(1)–2(g), or a transition base described in § 1.412(c)(3)–2(d), the current funding method, regardless of any other characteristics, must maintain such base(s) as if the funding method had not changed and must charge, or credit, the funding standard account with the amortization charge(s), or credit(s), for such base(s) after the change in funding method.

(2) Creation of a Funding Method Change Base. Except in the case of a change to a funding method described in section 3.02, section 3.03, section 3.04, or section 3.05, all existing bases shall be maintained and an amortization base shall be established equal to the difference between the unfunded accrued liability under the new method and an amount equal to (A) the net sum of the outstanding balances of all amortization bases (including, when the preceding method was an immediate gain method, the gain or loss base for the immediately preceding period), treating credit bases as negative bases, less (B) the credit balance (or plus the funding deficiency), if any, in the funding standard account, less (C) the sum of (i) any existing accumulation of additional funding charges for prior plan years due to § 412(l), (ii) any existing accumulation of additional interest charges due to late or unpaid quarterly installments for prior plan years and (iii) any existing accumulation of additional interest charges due to the amortization of prior funding waivers (which sum can be found on the Schedule B, for example, in 1997 on Line 9q(4)), all adjusted for interest at the valuation rate to the valuation date in the plan year for which the change is made. If this difference is a positive or negative number, the resulting base will be a charge base or a credit base, respectively. In the case of a change to a funding method described in section 3.02, section 3.03, section 3.04, or section 3.05, (a) the

bases described in paragraph (1) must be maintained, and (b) all amortization bases other than those described in paragraph (1) shall be considered fully amortized.

(3) Amortization Period. For any charge or credit base established pursuant to the requirements of paragraph (2), the amortization period is 10 years.

(4) No base is established due solely to a change in valuation date.

.02 Although compensation must be limited in accordance with § 401(a)(17) in determining benefits to be valued, it may or may not be so limited in determining the present value of future compensation expected to be paid to the participant for each year of the participant's anticipated future service. However, the alternative used is part of the method and any change in such practice is a change in funding method.

.03 Whenever, under the funding method, the normal cost is calculated as a level percentage of compensation, then an individual's compensation is included in the amount of current year's compensation to which the normal cost percentage is applied if and only if the compensation for that individual is included in the present value of future compensation over which normal costs are spread. Similarly, whenever the normal cost is calculated as a level dollar amount, then an individual is included in the determination of the number of individuals by which the normal cost per participant is multiplied if and only if that individual is included for purposes of determining the present value of an annuity of \$1 for years of anticipated service over which normal costs are spread.

**SECTION 6. RESTRICTIONS UNDER REVENUE PROCEDURE**

**.01 General Restrictions.**

(1) This revenue procedure does not apply to a change in funding method for a plan year if either (a) a Schedule B of Form 5500 has been filed for such plan year using some other funding method or (b) the due date (including extensions) for such Schedule B has passed.

(2) This revenue procedure does not apply unless the plan administrator (within the meaning of § 414(g)) or an authorized representative of the plan sponsor indicates as part of the series Form 5500 for the plan year for which the

change is effective that the plan administrator or plan sponsor agrees to the change in funding method. In the case of a special approval for a change in funding method described in section 4, other than the approval described in section 4.02 (Approval for Change in Funding Method for Fully Funded Terminated Plans), the requirement that the plan administrator or authorized representative of the plan sponsor agree to the change will be satisfied if the plan administrator or an authorized representative of the plan sponsor is made aware of the change before the Schedule B is filed.

(3) This revenue procedure does not apply if, for the plan year of the change, a minimum funding waiver under § 412(d) has been requested for the plan or is being amortized, or if an extension of an amortization period under § 412(e) has been requested or is currently applicable for computing minimum funding requirements, for the plan.

(4) This revenue procedure does not apply if the plan is under an Employee Plans examination for any plan year, or if the plan sponsor, or a representative, has received verbal or written notification from the Tax Exempt and Government Entities Division of an impending Employee Plans examination, or of an impending referral from another part of the Service for an Employee Plans examination, or if the plan has been under such an examination and is in Appeals or in litigation for issues raised in an Employee Plans examination.

(5) Except as provided in section 4.02, this revenue procedure does not apply to a change which is made for a plan year in which the plan is terminated.

(6) Non-Applicability if Shortfall Method is Discontinued. If the current method makes use of the shortfall method, approval to change to another funding method under this revenue procedure will apply only if the new funding method continues to make use of the shortfall method. For example, approval is not granted to change from the entry age normal method (which uses the shortfall method) to the unit credit method under section 3.01 unless the unit credit method makes use of the shortfall method.

.02 Additional Restrictions For Approvals in Section 3.

(1) Non-Applicability for Reversion Cases. This revenue procedure does not apply to changes in funding method required by Treasury Release R-2697 dated May 24, 1984, concerning the reversion of assets from a terminated plan. Furthermore, approval under section 3 does not apply if, in the 15 years preceding the date of change, such plan was involved in a transaction described in such Treasury Release subsequent to May 24, 1984.

(2) Non-Applicability for Plans Using Universal Life Insurance Products. Approval to change to a method described in section 3 does not apply in the case of a plan for which some of the assets are provided through universal life insurance policies unless, under the funding method adopted, (a) all plan benefits including those provided by the universal life insurance policies are considered liabilities in calculating costs and are funded using the same method as used for retirement costs, and (b) the cash value as of the valuation date of such contracts is treated the same as all other assets of the plan in calculating costs. However, the requirements of (a) above will not fail to be satisfied merely because ancillary benefits, within the meaning of § 1.412(c)(3)–1(f)(2) of the regulations, are funded on a reasonable one-year term funding method.

(3) Four-Year Limitation on Changes. Approval to change to a method described in section 3 does not apply to any of the following changes:

(a) the asset valuation method is being changed and the asset valuation method was changed in any of the four (4) preceding plan years,

(b) the valuation date is being changed and the valuation date was changed in any of the four (4) preceding plan years, or

(c) The funding method is being changed in a way not described in (a) or (b), and a funding method change (other than a change for which approval is provided by section 4 of this revenue procedure, or a change described in (a) or (b)) was made in any of the four (4) preceding plan years.

(4) Non-Applicability when Liabilities are Adjusted for Assets. Approval to change to a method described in section 3 does not apply to a change in funding

method under which the liabilities are adjusted to reflect the performance or expected performance of the assets.

(5) Non-Applicability if Benefit Accruals are Frozen Under the Plan. Approval to change to any method described in sections 3.02 through 3.09, does not apply if a plan provides that no participant may accrue a benefit as of a date that is no later than the first day of the plan year. In such a case, approval to change to the method described in section 3.01 applies only as described in section 4.01(5).

(6) Non-Applicability if Negative Normal Cost or Negative Unfunded Liability Results From the Change. Approval to change to a method described in section 3 does not apply if, after the change in method, a negative normal cost exists. Also, approval to change to a method described in section 3 does not apply if, after the change in method, a negative unfunded liability exists, and the method (a) is a spread gain method, and (b) uses an unfunded liability in determining the normal cost. For purposes of the preceding sentence, a spread gain method is any method that does not directly calculate an accrued liability. See Rev. Rul. 81–13 for whether a funding method directly calculates an accrued liability.

(7) Non-Applicability if Change in Method is Being Made Pursuant to a Spin-off or Merger. Approval to change to a method described in section 3 does not apply if the funding method for a plan year is being changed in connection with a plan spin-off or merger unless the change is made as provided in section 4.05, section 4.06, section 4.07, or section 4.08.

## SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for plan years commencing on or after January 1, 2000.

## SECTION 8. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 95–51, as clarified and modified by Rev. Proc. 98–10 and Rev. Proc. 99–45, is superseded.

## DRAFTING INFORMATION

The principal author of this revenue procedure is James E. Holland, Jr. of the Tax Exempt and Government Entities Di-

vision. For further information regarding this revenue procedure, call (202) 622-6076 between 2:30 and 3:30 Eastern time (not a toll free number) Monday through Friday. Mr. Holland's number is (202) 622-6730 (also not a toll free number).

*26 CFR 601.201: Rulings and determination letters.*

*(Also Part I, § 412.)*

## Rev. Proc. 2000–41

### Section 1. Purpose

The purpose of this revenue procedure is to set forth the procedure by which a plan administrator or plan sponsor may obtain approval of the Secretary of the Treasury for a change in funding method as provided by § 412(c)(5)(A) of the Internal Revenue Code, as amended (the "Code"), and § 302(c)(5)(A) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

### Section 2. Background

.01 Section 3(31) of ERISA lists some acceptable actuarial cost methods.

.02 Section 412(c)(5)(A) of the Code and § 302(c)(5)(A) of ERISA state that if the funding method of a plan is changed, the new funding method shall become effective only if the change is approved by the Secretary.

.03 Rev. Proc. 78–37, 1978–2 C.B. 540, provides the procedure by which a plan administrator or plan sponsor may obtain approval of the Secretary of the Treasury for a change in funding method.

.04 Rev. Proc. 2000–40, 2000–42 I.R.B. 357, provides approval to change the funding method used to determine the minimum funding requirement for defined benefit plans to any one of the methods described therein.

.05 Rev. Proc. 2000–4, 2000–1 I.R.B. 115, sets forth the current general procedures of the Service relating to the issuance of rulings, determination letters, and opinion letters on employee plans and exempt organization matters. These general procedures are updated annually. Sections 9.02(11) and (12) of Rev. Proc. 2000–4 set forth the requirements for designating an authorized representative.

.06 Rev. Proc. 2000–8, 2000–1 I.R.B. 230, sets forth the current procedures re-

lating to the payment of user fees for requests to the Service for rulings, opinion letters, determination letters, and similar requests. The user fee procedures are updated annually.

### Section 3. Scope and Definition

.01 This revenue procedure applies to any defined benefit plan that is subject to § 412 of the Code or § 302 of ERISA.

.02 Any change in a plan's current method of computing the minimum funding requirement under § 412 of the Code or § 302 of ERISA is a change in funding method (see § 1.412(c)(1)–1(b) of the Income Tax Regulations). The following are examples of a change in funding method:

Example 1 – The minimum funding requirement is computed using the entry age normal method. Changing the method to the unit credit method is a change in funding method.

Example 2 – The minimum funding requirement is computed using the aggregate method under which the normal cost is level as a percentage of compensation. Changing the method to the aggregate method under which the normal cost is level as a dollar amount is a change in funding method.

Example 3 – The method of valuing liabilities is unchanged, but the method of valuing assets is changed from one method to another method. This is a change in funding method.

Example 4 – The valuation date for the plan is the date that is the first day of the plan year. Changing the valuation date to the date that is the last day of the plan year is a change in funding method.

Example 5 – The valuation date for the plan is the date that is the first day of the plan year. The plan year is changed, and the valuation date is changed to the date that is the first day of the new plan year. This is a change in funding method.

Example 6 – The plan's enrolled actuary uses Vendor A's software to determine the plan's minimum funding requirement. If the enrolled actuary changes to Vendor B's software and the results of each specific computation are not the same after the change in valuation software, this is a change in funding method.

Example 7 – The method for determining the cost of ancillary benefits is changed from one method to another method. This is a change in funding method.

.03 This revenue procedure applies to any change in funding method for any plan year after the first plan year in which a plan is subject to § 412 of the Code or § 302 of ERISA. A funding method adopted for a newly established plan is not a change in funding method. A plan established as a result of a spin-off within the meaning of § 1.414(l)–1(b)(4), other than a plan established as a result of a de minimis spin-off, is not a newly established plan for this purpose.

.04 Approval will be given to a change in funding method only if the proposed method is acceptable and the transition to the proposed method is acceptable. In addition, a change in funding method that has a significant effect on a plan's minimum funding requirement or full funding limitation in the year of change may be reviewed to assess the appropriateness of the change in light of that effect.

### Section 4. Application

.01 A plan administrator, plan sponsor, or the authorized representative of either who desires to obtain approval for a change in funding method should make a written request (no form is prescribed for requesting approval) to:

Internal Revenue Service  
Commissioner, TE/GE  
Attention: T:EP:RA  
P.O. Box 27063, McPherson Station  
Washington, DC 20038

.02 (1) The request should be made no later than the close of the plan year for which the change is to be effective. However, requests made after the close of the plan year, but no later than 2 1/2 months after the close of the plan year, will generally be considered, at the discretion of the Service, if a statement is attached to the request detailing an adequate reason for the delay. Requests made after 2 1/2 months after the close of the plan year generally will not be considered. However, if a request for approval of a change in funding method involves a plan merger, the request should be made no later than 4 months before the filing deadline for Schedule B (Actuarial Information) of Form 5500 (of the merged plan) for the plan year in which the merger took place.

(2) If a change to an element of a funding method was recently approved and a subsequent modification of the same element is requested, the subsequent modification generally will not be considered. For example, if a plan was using a 5-year smoothing asset valuation method prior to 1999 and the plan sponsor received approval to set the actuarial value of assets at market value for 1999 (with a phase-in of gains and/or losses in subsequent years), a request in 2001 to set the actuarial value of assets to market value for 2001 (with a phase-in of gains and/or losses in subsequent years) will not be considered.

.03 The request must satisfy all the requirements of Rev. Proc. 2000–4. Attention is called to section 9 of Rev. Proc. 2000–4 concerning signatures, authorized representatives, a power of attorney and declaration of representative, and a penalties of perjury statement. However, a statement of proposed deletions pursuant to § 6110(c) of the Code is not required to be furnished. All signatures should be accompanied by the typed name and title (if applicable) of the signer.

.04 The following information shall accompany the request:

- (1) The employer identification number, the plan name and number, and the name and address of the plan administrator or plan sponsor.
- (2) A copy of the actuarial valuation report for the plan year preceding the year of change, and, if available, a draft of the actuarial valuation report for the year of change. For requests involving mergers, a copy of each of the valuation reports for all the merging plans for the plan year preceding the change and, if available, a draft of the actuarial valuation report for the year of change, should be included.
- (3) A copy of the Schedule B (Actuarial Information) of Form 5500, including attachments thereto, that has been filed for the plan year preceding the year of change. For requests involving mergers, a copy of the most recent Schedule B that has been filed for a plan year preceding the year of change should be included for each of the merging plans.
- (4) A statement of the plan year first affected by the proposed change.
- (5) A description of the current funding method and the proposed funding method. The method can be described by reference to a method contained in Rev. Proc. 2000–40. For example, the level percent of compensation individual entry age normal method may be described by reference to section 3.08 of Rev. Proc. 2000–40. The method can also be described by indicating a



particular variation of a method described in Rev. Proc. 2000–40. The description of a method should be such that it would allow two independent actuaries to arrive at the same valuation results using the same method and assumptions for a given plan. If applicable, the description should indicate whether the method involves the use of a certain rule in the first year of the change and a different rule in subsequent years. For example, an asset valuation method change may restart at market value in the year of change, and may phase-in gains and losses in subsequent years. Additionally, if the method is an asset valuation method not described in Rev. Proc. 2000–40, a numerical illustration demonstrating the calculation of the actuarial value of assets under the current method and the proposed method should be included. If the change in funding method involves a plan merger, a description of the funding method that was used by each of the merging plans before the merger and the proposed funding method that is used by the merged plan should be included.

- (6) A brief statement of the reason for the proposed change and a statement why automatic approval under Rev. Proc. 2000–40 cannot be used to make the change.
- (7) A statement of whether a change in funding method was previously requested.
- (8) A statement of other changes being made for the year of change, such as a change in plan year or change in actuarial assumptions.
- (9) Technical Information
  - (A) A worksheet should be prepared by the enrolled actuary for the plan. The worksheet should contain the information described below determined as of the valuation date in the year of the change in funding method. The infor-

mation below should be shown (1) prior to any change in plan provisions, assumptions, or funding methods that apply in the year of change, and (2) after the change in funding method and other changes that occur in the year of change:

- (i) A list of the amortization bases maintained (including, for each base, the type of base, outstanding balance, amortization period, and amortization amount). Note that the bases maintained prior to and after implementing all current year changes will differ by the inclusion of the new base(s). The calculation of the new base(s) should also be shown.
 

If bases are combined and offset in the year of change, in addition to the resulting single base, show information on each of the bases involved.
- (ii) The unfunded liability of the plan. For immediate gain methods, show the actuarial value of assets prior to any adjustments.
- (iii) The basic funding formula (or equation of balance). If the equation of balance is not satisfied, explain the effect on the operation of the funding method in the year of change.

In the case of a plan change involving a merger, the above information should be provided for all merging plans as of the date of the merger. If the plan change involves a spin-off, the above information should be provided for the original plan immediately prior to the spin-off date and for the plans immediately after the spin-off date.

- (B) The calculation of the § 412 full funding limitation for the plan year prior to the plan year of change, and for the plan year of change. In the case of a plan merger, the cal-

ulation of the § 412 full funding limitation should be given for all merging plans immediately prior to the merger and for the merged plan after the merger.

- (10) A statement of whether a waiver of the minimum funding standard is currently in effect and whether a request for a waiver is currently pending or is expected to be submitted in the near future.

A checklist has been provided in Appendix A for the convenience of the taxpayer submitting the request. In certain cases some of the material described above may be inappropriate or burdensome to furnish. In such cases, the request for approval should include a statement indicating why such material is not being furnished.

.05 The Service may request additional information as needed.

.06 If a conference has been requested, a conference will be granted only in accordance with section 12 of Rev. Proc. 2000–4. Furthermore, if the Service proposes an adverse holding, the taxpayer will be offered a conference in accordance with section 12.02 of Rev. Proc. 2000–4.

.07 If the request for the change in funding method is approved, the instructions under line 5 of Schedule B (Actuarial Information) of Form 5500 should be followed in reporting the change. Currently, this requires entering the date of the ruling letter on line 5k of Schedule B.

#### Section 5. Class Rulings

.01 In a case where approval is desired for a change in funding method that is identical for a group of plans in excess of 40 receiving actuarial services from the same insurance company or consulting firm, a “class ruling” may be requested approving the change for all consenting taxpayers in the class. A class generally consists of the group of plans (1) receiving actuarial services from the same insurance company or consulting firm, or whose actuarial valuations are produced using the software of the same vendor, and (2) for which the element of the funding method that is proposed to be changed was the same. An element of a funding method is defined for purposes of this



revenue procedure as (1) an asset valuation method, (2) a valuation date, or (3) the funding method without regard to the asset valuation method or the valuation date.

.02 The class ruling may be requested by an enrolled actuary on behalf of an insurance company or consulting firm that provides actuarial services to the plans. An enrolled actuary on behalf of a software vendor may also request a class ruling; such ruling would apply to all plans whose actuarial valuations are produced using that vendor's software (both before and after the change in funding method).

.03 The enrolled actuary making the request should state the period for which the class ruling is proposed to be effective. The ruling will apply to plan years beginning within the stated period. The stated period cannot begin prior to 12 months before the month in which the request is made. Generally, the period cannot be longer than 36 months.

.04 In lieu of the plan-specific information otherwise required under section 4, the request for a class ruling shall contain the following information:

- (1) The name and enrollment number of the actuary making the request.
- (2) The name and address of the insurance company, consulting firm, or software vendor described in subsection 5.02.
- (3) A statement indicating that the applicant believes that the class ruling will be applied to at least 40 plans and an estimate of the number of plans that is expected to change the funding method in accordance with the class ruling.
- (4) The information described in subsections 4.04(5), 4.04(6), and 4.04(9), except that the numerical results requested in 4.04(9) should be a numerical illustrative example rather than actual numerical results.

.05 If the change in funding method is approved, a "class ruling letter" will be issued to the insurance company, consult-

ing firm, or software vendor requesting the ruling. However, it is not incumbent upon the plan administrator or plan sponsor of any plan to agree to the change in funding method. If the change in funding method covered by the class ruling letter is desired, the instructions under line 5 of Schedule B (Actuarial Information) and line 7 of Schedule R (Retirement Plan Information) of Form 5500 should be followed in reporting the change. Currently, this requires entering the date of the class ruling letter on line 5k of Schedule B and reporting the plan sponsor's agreement to the change in funding method on line 7 of Schedule R.

.06 If a request for a class ruling is approved, at least 30 of the plans covered by the ruling must make the change in funding method in order for the ruling to become effective.

.07 The Service may, in its discretion, limit the period for which a class ruling will be effective, impose conditions on the use of the class ruling, or decline to issue a class ruling.

#### Section 6. Effect on other Documents

.01 Rev. Proc. 2000-4 is modified to the extent that this revenue procedure provides special procedures for issuing rulings with respect to a change in funding method.

.02 Rev. Proc. 78-37 is superseded.

#### Section 7. Effective Date

This revenue procedure is effective for requests for changes in funding method made on or after December 1, 2000.

#### Section 8. 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 1545-1704.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the col-

lection of information displays a valid control number.

The collection of information in this revenue procedure is in sections 4 and 5. This information is required to evaluate and process the request for a change in funding method. The collection of information is required to obtain approval for a change in funding method. The likely respondents are businesses or other for-profit institutions, nonprofit institutions, and small businesses and organizations.

The estimated total annual reporting burden is 5,400 hours.

The estimated annual burden per respondent varies from 12 to 24 hours, depending on individual circumstances, with an estimated average burden of 18 hours. The estimated number of respondents and/or recordkeepers is 300.

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 John C. Heil of Employee Plans Actuarial Group 2, TE/GE Rulings and Agreements. For further information regarding this revenue procedure, please contact the Employee Plans Actuarial Group taxpayer assistance telephone service between the hour of 2:30 p.m. and 3:30 p.m., Eastern Time, Monday through Thursday at (202) 622-6076 (not a toll-free number). Mr. Heil's telephone number is (202) 622-7383 (prior to October 28, 2000), or (202) 283-9694 (after October 28, 2000), also not toll-free numbers.

Appendix A

CHANGE IN FUNDING METHOD REQUEST CHECKLIST  
IS YOUR SUBMISSION COMPLETE?

Instructions

The Service will be able to respond more quickly to your change in funding method request 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 taxpayer 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. However, this checklist need not be submitted if the request involves a class ruling described in section 5 of this revenue procedure.

- \_\_\_\_\_ 1. If you want to designate an authorized representative or a third party contact, have you included a properly executed Form 2848 (Power of Attorney and Declaration of Representative) or Third Party Contact Authorization Form?
- \_\_\_\_\_ 2. Have you satisfied all the requirements of Rev. Proc. 2000-4 or its successors (especially concerning signatures and penalties of perjury statement)? (See sections 2.05 & 4.03)
- \_\_\_\_\_ 3. Have you included the user fee required under Rev. Proc. 2000-8 or its successors? (See section 2.06)
- \_\_\_\_\_ 4. Have you included the employer identification number, the plan name and number, and the name and address of the plan administrator or plan sponsor? (See section 4.04(1))
- \_\_\_\_\_ 5. Have you included a copy of the actuarial valuation report for the plan year preceding the year of change, and, if available, a draft of the actuarial valuation report for the year of change? (See section 4.04(2))
- \_\_\_\_\_ 6. Have you included a copy of the last Schedule B (Actuarial Information) of Form 5500, including attachments thereto (for requests involving mergers, a copy of the last Schedule B for each of the merging plans)? (See section 4.04(3))
- \_\_\_\_\_ 7. Have you included a statement of the plan year first affected by the proposed change? (See section 4.04(4))
- \_\_\_\_\_ 8. Have you included a complete description of the current and proposed funding methods, including asset valuation methods? (See section 4.04(5))
- \_\_\_\_\_ 9. Have you included a brief statement of the reason for the proposed change and a statement why automatic approval under Rev. Proc. 2000-40 cannot be used to make the change? (See section 4.04(6))
- \_\_\_\_\_ 10. Have you included a statement whether a change in funding method was previously requested? (See section 4.04(7))
- \_\_\_\_\_ 11. Have you included a statement of other changes being made for the year of change, such as a change in plan year or change in actuarial assumptions? (See section 4.04(8))
- \_\_\_\_\_ 12. Have you included a worksheet prepared by the enrolled actuary for the plan, showing a "before and after" list of the amortization bases, the unfunded liability of the plan, and the basic funding formula (or equation of balance) using the proposed method? Have you included the calculation of the full funding limitation for the plan year prior to the plan year of change and for the plan year of change? (See section 4.04(9))
- \_\_\_\_\_ 13. Have you included a statement of whether a waiver of the minimum funding standard is currently in effect and whether a request for a waiver is currently pending or is expected to be submitted in the near future? (See section 4.04(10))

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title or Authority

\_\_\_\_\_  
Typed or printed name of person signing checklist

## Part IV. Items of General Interest

### Withdrawal of Previous Proposed Regulations; Notice of Proposed Rulemaking and Notice of Public Hearing

#### Agent for Consolidated Group

#### REG-103805-99

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of previous proposed regulations; notice of proposed rulemaking; and notice of public hearing.

SUMMARY: This document contains proposed regulations regarding the agent for an affiliated group that files a consolidated return (consolidated group). The proposed regulations address certain issues raised by the current regulations concerning the agent for the group when the common parent ceases to be the common parent, as well as questions concerning the scope of the common parent's authority. These proposed regulations affect all consolidated groups. This document also provides notice of a public hearing on these proposed regulations. In addition, this document withdraws a portion of the proposed rulemaking (LR-97-79, 1984-2 C.B. 821) published in the **Federal Register**, July 31, 1984.

DATES: Written and electronic comments must be received by December 26, 2000. Outlines of topics to be discussed at the public hearing scheduled for 10 a.m. on January 22, 2001, must be received by December 26, 2000.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG-103805-99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:M&SP:RU (REG-103805-99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at [http://www.irs.ustreas.gov/tax\\_regs/regslis](http://www.irs.ustreas.gov/tax_regs/regslis)

t.html. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Gerald B. Fleming or George R. Johnson, (202) 622-7930; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Sonya Cruse, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by November 27, 2000.

Comments are specifically requested concerning:

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

The accuracy of the estimated burden associated with the proposed collection of information;

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

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

Estimates of capital or start-up costs and costs of operation, maintenance, and

purchase of services to provide information.

The collection of information in the proposed regulations is in §1.1502-77(d). This information is required for the common parent to notify the IRS of the designation of a new agent for the consolidated group when the common parent's existence is about to terminate and for the designated corporation to confirm that it agrees to serve as the group's new agent and qualifies to be the group's agent. The collection of information is required to obtain a benefit, i.e., to designate a new agent for the consolidated group. The likely respondents are business or other for-profit institutions.

The regulations provide that a common parent or a previously designated agent of a consolidated group should notify the Commissioner in writing, in accordance with procedures prescribed by the Commissioner, that it anticipates going out of existence and that it designates another corporation to serve as the group's agent for specified prior consolidated return years. In addition, the notification should include a statement by the designated corporation agreeing to serve as the group's agent and, if the designated corporation was not itself a member of the group, a statement that it is or will be liable for the tax. An agent designated by the Commissioner is required to give notice to each corporation (or any successor) that was a member of the group during any part of the relevant consolidated return year. The burden for the collection of information in §1.1502-77(d) is as follows:

Estimated total annual reporting burden: 200 hours.

Estimated average annual burden per respondent: 2 hours.

Estimated number of respondents: 100.

Estimated annual frequency of responses: On occasion.

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

Books or records relating to a collection of information must be retained as long as their contents may become mate-

rial in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## Background

This document proposes amendments to 26 CFR part 1 under section 1502 of the Internal Revenue Code of 1986 (Code). The proposed amendments clarify and supplement existing rules under §1.1502-77 concerning the agent for a consolidated group and the designation of a new agent to act for the group. The proposed amendments also clarify rules concerning the common parent as agent for a corporation whose income is improperly included in a consolidated return. In addition, the proposed amendments modify and clarify the rules concerning the proper party to apply for and receive a refund payment due to a tentative carryback adjustment under §1.1502-78. The proposed regulations also terminate §1.1502-77T for tax years beginning on or after the effective date of final regulations amending §1.1502-77.

Section 1.1502-77(a) currently provides that the common parent is the “sole agent” for the consolidated group with respect to nearly all procedural tax matters relating to the group’s tax liability for a consolidated return year. Notwithstanding this general rule, §1.1502-77(a) provides that the IRS may, upon notifying the common parent, deal directly with any member of the group in respect of its liability, in which case that member shall have full authority to act for itself.

Because the common parent’s authority to act as agent for the group terminates when the common parent corporation ceases to exist, §1.1502-77(d) provides for the designation of a new agent to act for the group. Section 1.1502-77(d) first grants the terminating common parent, prior to going out of existence, the authority to designate a remaining member to act as agent for the group (a designated agent) regarding the group’s prior consolidated return years. If the common parent goes out of existence without designating a new agent, §1.1502-77(d) provides that the remaining members of the group may designate a new agent. A designation of a new

agent under this provision, by either the common parent or the remaining members, is subject to the approval of the district director with which the group files its return. Section 1.1502-77(d) also grants the IRS the authority to deal separately with each remaining member of the group with respect to its liability in the event that neither the common parent nor the surviving members designate a new agent.

Decisions of the United States Tax Court have highlighted difficulties in applying these rules to situations where a group continues to exist following a transaction described in §1.1502-75(d) (a group structure change), in which a new common parent has replaced the former common parent (which may or may not have remained in existence or remained a member of the group). See *Interlake Corp. v. Commissioner*, 112 T.C. 103 (1999); *Union Oil Co. v. Commissioner*, 101 T.C. 130 (1993); *Southern Pacific Co. v. Commissioner*, 84 T.C. 395, 404 (1985).

On September 8, 1988, various final and temporary regulations under section 1502 were published in the **Federal Register** (T.D. 8226, 1988-2 C.B. 325 [53 F.R. 34729]). At the same time, a notice of proposed rulemaking (LR-66-88, 1988-2 C.B. 848) cross-referenced to the text of the temporary regulations was also published (53 F.R. 34779). Included in the temporary regulations was §1.1502-77T. In situations where the corporation that was the common parent of the group ceases to be the common parent, §1.1502-77T provides alternative agents to act for a consolidated group, but only for purposes of mailing notices of deficiency and waiving periods of limitations. Specifically, §1.1502-77T allows the following alternative agents to act on behalf of the group: (1) the common parent of the group for all or any part of the year to which the notice or waiver applies, (2) a successor to the former common parent in a transaction to which section 381(a) applies, (3) the agent designated by the group under §1.1502-77(d), or (4) if the group remains in existence under §1.1502-75(d)(2) or (3), the common parent of the group at the time the notice is mailed or the waiver given.

The IRS received no comments on

§1.1502-77T and has not issued final regulations concerning alternative agents.

## Reasons for Change

Given the common parent’s role as the agent for the group, issues arise about who has authority to act on behalf of the group for consolidated return years where the common parent has ceased to exist (e.g., due to a merger or liquidation) or where, while continuing to exist, it has ceased to be the common parent of the group (e.g., as a result of being acquired by another corporation). Other issues arise concerning the proper agent, as well as the scope of that agency, where a consolidated return improperly includes the income of a corporation that should have filed separately or when the IRS issues a tentative refund in response to a claim filed by a former member of the group.

Although the current provisions of §§1.1502-77 and 1.1502-77T provide guidance in limited situations, numerous issues have arisen in situations outside the scope of these provisions. The alternative agent approach of §1.1502-77T addressed agency issues regarding notices of deficiency and waivers of periods of limitations. It was intended to offer flexibility in allowing both taxpayers and the IRS to choose from among several potential agents to act for the group and also to ensure that whichever corporation is selected would be a permissible agent to act for the group. However, an alternative agent provided by §1.1502-77T is the agent for the group only for purposes of mailing notices of deficiency or for executing consents to extend periods of limitations. Under §1.1502-77T, an alternative agent has no authority to act as the group’s agent for other purposes (e.g., filing a refund claim, receiving refund payments or executing a closing agreement). As a result, under the current rules, absent a designation of one of the remaining members to act as agent under §1.1502-77(d), the IRS may have no option other than to deal separately with each remaining member for any purpose not covered by §1.1502-77T.

The IRS and Treasury initially considered the possibility of expanding the scope of the authority of alternative



agents under §1.1502-77T to include all matters under the common parent's scope of authority as set forth in §1.1502-77(a). However, it was ultimately concluded that the shortcomings of the alternative agent approach outweigh its benefits. In particular, that approach lacks certainty because the IRS could deal with any one of several alternative agents and more than one corporation could initiate actions on behalf of the group. Also, a corporation could serve as an alternative agent without having been related to members of the group during the consolidated return year at issue or without being liable for the consolidated tax for that year.

In lieu of expanding the alternative agent approach of §1.1502-77T, the IRS and Treasury propose to revise the rules of §1.1502-77 and to terminate the application of §1.1502-77T. Under the proposed regulations, as discussed in more detail below, the common parent remains the agent for the group's consolidated return year as long as it remains in existence, regardless of whether it continues to be a common parent or a member of the group, or whether the group continues under §1.1502-75(d).

The proposed regulations set forth procedures for a common parent to designate a new agent for the group when the common parent ceases to exist, and permit the IRS to designate a new agent if the common parent fails to do so. The proposed regulations do not contain a provision allowing the remaining members to designate a new agent if the common parent fails to make a designation before it ceases to exist. The proposed regulations provide that the common parent acts as the agent with regard to the liability of any corporation whose income is improperly included in the group's return but whose liability is subsequently computed on the basis of a separate return or as a member of another consolidated group.

Finally, the proposed regulations modify the rule in §1.1502-78(a) concerning an application under section 6411 for a tentative carryback adjustment with respect to a loss or business credit arising in a separate return limitation year. Under the proposed amendments, the application should be filed by the common parent for the carryback

year instead of the corporation to which the loss or credit is attributable. In addition, the proposed amendments clarify that any refund under §1.1502-78(b) related to a tentative carryback adjustment must be paid to the corporation that was the common parent (or is the designated agent) for the carryback year. The proposed amendments also replace the word "investment" with "business" in the term *unused investment credit* in §1.1502-78(a) to conform to changes in section 6411.

### Explanation of Provisions

In order to reduce uncertainty for both taxpayers and the IRS, the proposed amendments to §1.1502-77(a) provide that the common parent for a consolidated return year remains the agent for the group for that year as long as it continues to exist. This rule applies even if the common parent, for whatever reason, ceases to be the common parent. Thus, for example, if the common parent becomes a subsidiary member of the consolidated group, which continues under §1.1502-75(d), if the common parent becomes a stand-alone corporation, or even if the common parent becomes a subsidiary member of another group, it remains the agent of the group for those consolidated return years during which it was the group's common parent. Cf. *Interlake Corp. v. Commissioner*, 112 T.C. 103 (1999); *Union Oil Co. v. Commissioner*, 101 T.C. 130 (1993).

The proposed regulations provide a rule for situations where a corporation files a consolidated return as the common parent of an affiliated group but is subsequently determined not to be the actual common parent of that group. In such situations, the corporation that filed as the common parent is considered to be the agent for each member of the claimed group even though it was not actually the common parent. This situation may arise, for example, where the common parent fails to own stock satisfying the 80-percent voting and value requirement of section 1504(a)(2).

The proposed regulations clarify that the common parent's authority as agent for a taxable year extends to any successor of a member. For purposes of §1.1502-77 only, the term *successor* means a party that, pursuant to applicable

law, has become primarily liable for the tax liabilities of the common parent or any subsidiary member. Such determination is made without regard to §1.1502-1(f)(4) (defining the term *successor* for purposes of the definition of a separate return limitation year). The proposed regulations also clarify that the common parent remains the sole agent with respect to the consolidated tax liability under §1.1502-6 of a subsidiary (or its successor) that is or becomes a disregarded entity for Federal tax purposes.

Where transferee liability exists under applicable law, the proposed regulations provide that, for purposes of assessing, paying or collecting transferee liability, actions of the common parent with respect to the group's tax liability will derivatively affect the liability of a transferee of a member, regardless of whether the transferor member remains in existence. This provision is essentially an application of general principles of transferee liability in the context of a consolidated group. Under case law, the actions of a transferor derivatively affect the liability of a transferee, even if the actions are taken after the transfer occurs. See, e.g., *United States v. Vassallo, Inc.*, 274 F.2d 791, 793-794 (3d Cir. 1960). As provided in the proposed regulations, the common parent's actions on behalf of the group are always binding on each member of the group. Therefore, any actions of a common parent with respect to the group's liability for a consolidated return year will derivatively affect the liability of a transferee of a transferor member that remains in existence, even if the action occurs after the transfer giving rise to the transferee liability.

The proposed regulations recognize the derivative effect of the common parent's actions on transferee liability and further provide that actions taken by or with respect to the common parent, as agent for the group, after a transferor member has ceased to exist, also derivatively affect the liability of a transferee of such member to the same extent as if the transferor member had remained in existence. For example, under this provision, a waiver extending the limitations period for assessment, executed by the common parent (as agent for the group) after a member ceases to exist, would have the derivative effect of extending the limitations period with re-

spect to a transferee of such member.

The proposed regulations revise the rules governing the designation of a new agent for the group when the common parent ceases to exist. They retain the current provision under §1.1502-77(d) for the common parent to notify the IRS and designate, subject to the approval of the IRS, another member to act as the group's agent for the consolidated return year.

As under the current rule, the proposed regulations provide that the common parent may designate one of the remaining members of the group as the new agent for the group. The proposed regulations provide that the member designated as the agent for a consolidated return year must have been a member of the group during the consolidated return year and must not subsequently have been disregarded as an entity separate from its owner or treated as a partnership for purposes of Federal taxes. However, the common parent may also designate a domestic corporation (that is not disregarded as an entity separate from its owner or classified as a partnership for Federal tax purposes) that is primarily liable as a successor of any corporation that was a member of the group during the consolidated return year. In addition, the common parent will be permitted to designate any domestic corporation (that is not disregarded as an entity separate from its owner or classified as a partnership for Federal tax purposes) that is to become primarily liable as the common parent's successor in connection with a transaction in which the common parent's existence terminates. If an agent previously designated under this provision ceases to exist, the proposed regulations provide for such terminating agent to designate a new agent in the same manner that is available to a common parent that is going out of existence.

For purposes of the designation provision, a corporation's existence is deemed to cease not only if the corporation ceases to exist under applicable law, but also if the corporation becomes a disregarded entity or reclassified as a partnership for Federal tax purposes. However, if treating a corporation as ceasing to exist when it becomes a disregarded entity or reclassified as a partnership would leave no other corporation eligible to serve as a designated agent for the group, its existence would not be

deemed to terminate. As used in the proposed regulations, the term *disregarded entity* includes a qualified subchapter S subsidiary for which an election is made pursuant to section 1361(b)(3)(B), a qualified REIT subsidiary within the meaning of section 856(i)(2), or an entity that is disregarded as an entity separate from its owner under the "check-the-box" rules of §301.7701-3. If, as a result of becoming a disregarded entity or reclassified as a partnership, the group's agent ceases to exist for Federal tax purposes without designating a new agent and subsequently purports to act on behalf of the group, any actions taken by the purported agent will, to the extent determined appropriate by the Commissioner, have the same effect as if the agent's existence had not terminated.

In the event the common parent (or a previously designated agent) fails to designate a new agent before going out of existence, the proposed regulations authorize the IRS to designate a new agent for the group. The IRS may designate one of the remaining members of the group for the consolidated return year (that has not been disregarded as an entity separate from its owner or reclassified as a partnership for Federal tax purposes), or any domestic corporation (that is not disregarded as an entity separate from its owner or classified as a partnership for Federal tax purposes) that is primarily liable as a successor of such a member, to act as the group's agent. This provides the IRS with a readily available option in cases where it needs to address a consolidated group's tax liability and no new agent has otherwise been designated. Any corporation that the IRS designates as the agent for the consolidated return year generally will continue as the group's agent as long as it remains in existence. At the request of one or more members, however, the IRS may (but is not required to) replace a designated agent with another member (or successor of a member) for the consolidated return year.

The proposed regulations direct the IRS and the designated agent to provide notification of the designation to the other remaining members/successors. Any failure by the IRS and/or the designated agent to give notification to a member/successor does not invalidate the designation.

Under the current regulations, the re-

maining members for a consolidated return year may designate a new agent in the event the common parent does not designate a new agent that is approved by the IRS. In practice, taxpayers have seldom utilized this provision because it is unwieldy and largely impracticable except for groups comprising only a few members. Accordingly, in light of the infrequency with which taxpayers use this provision, and in the interest of providing simple and administrable procedures, the IRS and Treasury have concluded that there is no longer a need to provide for any designation by the remaining members.

As under the current regulations, the proposed regulations provide that a designation by the common parent or a designated agent cannot become effective until it is approved by the IRS. The proposed regulations clarify that the Commissioner's approval of a designation by a common parent (or designated agent) will not be effective before the corporation making the designation ceases to exist. In the absence of an effective approved designation, a notice of deficiency or any other communication mailed to the former common parent or former designated agent, even if no longer in existence, is treated as having been properly mailed to all members and successors.

The proposed regulations retain the provision in the current regulations authorizing the Commissioner, upon notifying the common parent, to deal separately with a member concerning that member's several liability for the consolidated tax. In such a case, the member would have full authority to act for itself.

The proposed regulations eliminate §1.1502-77T for consolidated return years beginning after the date that the final regulations under §1.1502-77 are published in the **Federal Register**.

The proposed regulations provide that the common parent is the sole agent for any corporation that is improperly included in the group's return and whose tax liability should have been computed on the basis of a separate return or as a member of another consolidated group. This provision is consistent with the current rule of §1.1502-77(c)(2), relating to the effect of waivers of periods of limitations on assessment that are executed by the common parent. The proposed regulations are also con-

sistent with rulings of the Tax Court in several cases. See *Intervest Enterprises, Inc. v. Commissioner*, 59 T.C. 91, 96–97 (1972); *Lone Star Life Insurance Company v. Commissioner*, T.C. Memo. 1997–465; *INI, Inc. v. Commissioner*, T.C. Memo. 1995–112, *aff'd per curiam*, 107 F.3d 27 (11th Cir. 1997). See also *Alumax Inc. v. Commissioner*, 109 T.C. 133, 196 (1997) (holding that the improper inclusion of a corporation in a consolidated return does not alter the agency relationship established under §1.1502–77(c)), *aff'd on other grounds*, 165 F.3d 822 (11th Cir. 1999).

The proposed regulations amend §1.1502–78(a) to provide that the common parent for the carryback year should file any application under section 6411 for a tentative carryback adjustment with respect to a loss or credit arising in a separate return limitation year that may be carried back to a consolidated return year. The current rule, which provides that the corporation to which such loss or credit is attributable should file such application, is inconsistent with the general rule of §1.1502–77 that the common parent is the sole agent for the group and with the rule of §1.1502–78(b) that payment of any resulting refund is made to the common parent.

In *Interlake Corp. v. Commissioner*, 112 T.C. 103, 112–113 (1999), the Tax Court found that §1.1502–78(b) is unclear as to whether the common parent in the carryback year or the common parent in the loss year should be the group's agent to receive a refund resulting from a tentative carryback adjustment. 112 T.C. at 112–113. The proposed regulations amend §1.1502–78(b) to provide expressly that the refund should be paid to the common parent or designated agent for the group's carryback year.

Finally, because the position of district director will be eliminated in the restructuring of the IRS, the proposed regulations substitute “the Commissioner” for various references to the district director in §1.1502–77. If the proposed rules are adopted, procedures for the designation of a new agent under the new IRS structure, by either a terminating common parent or the Commissioner, will be announced when final regulations are issued. It is anticipated that such procedures will be embodied in a revenue procedure that may also include provisions for one or more members of a group to request that the Commissioner

designate an agent in situations where the common parent or previously designated agent failed to designate a new agent before it ceased to exist, whether or not the Commissioner has already designated an agent. Comments are invited concerning these procedures.

### Proposed Effective Date

The amendments to §1.1502–77 are proposed to apply to consolidated return years beginning on or after the date final regulations are published in the **Federal Register**. The current rules of §§1.1502–77 and 1.1502–77T continue to apply with respect to consolidated return years beginning before the effective date of final regulations under §1.1502–77. Thus, the alternative agent approach of the temporary regulation would continue to apply for purposes of mailing notices of deficiency and executing waivers of periods of limitations on assessment with respect to consolidated return years beginning before the date final regulations are published in the **Federal Register**.

The amendments to §1.1502–78 are proposed to apply to taxable years to which a loss or credit may be carried back and for which the due date (without extensions) of the original return is after the date final regulations are published in the **Federal Register**.

### 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 is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses, and, moreover, that any burden on taxpayers is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy

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

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS.

The IRS and Treasury request comments on the clarity of the proposed rules and how they may be made easier to understand or to implement. In addition, comments are requested on the treatment in the proposed regulations of entities that become disregarded as entities separate from their owners or become partnerships for Federal tax purposes. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 22, 2001, beginning at 10 a.m. in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the FOR FURTHER INFORMATION CONTACT section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must request to speak, and submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by December 26, 2000.

A period of ten minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.



## Drafting Information

The principal authors of these proposed regulations are Gerald B. Fleming, George R. Johnson and Steven J. Hankin, Office of the Assistant Chief Counsel (Field Service). However, other personnel from the IRS and Treasury Department participated in their development.

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## Proposed Amendments to the Regulations

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

### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing entries for sections 1.1502-77(e) and 1.1502-78(b) and adding entries in numerical order to read in part as follows:

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

Section 1.1502-77 also issued under 26 U.S.C. 1502 and 6402(j).

Section 1.1502-78 also issued under 26 U.S.C. 1502, 6402(j), and 6411(c). \* \* \*

Section 1.1502-77A also issued under 26 U.S.C. 1502 and 6402(j). \* \* \*

Par. 2. Immediately following §1.1502-41A, an undesignated center heading is added to read as follows:

#### REGULATIONS APPLICABLE TO TAXABLE YEARS BEGINNING BEFORE THE DATE FINAL REGULATIONS ARE PUBLISHED IN THE **FEDERAL REGISTER**

Par. 3. Immediately before §1.1502-79A, an undesignated center heading is added to read as follows:

#### REGULATIONS APPLICABLE TO TAXABLE YEARS BEFORE January 1, 1997

Par. 4. Section 1.1502-77 is redesignated as §1.1502-77A and transferred immediately after the undesignated center heading “REGULATIONS APPLICABLE TO TAXABLE YEARS BEGINNING BEFORE THE DATE FINAL REGULATIONS ARE PUBLISHED IN THE **FEDERAL REGISTER**”; the section heading of newly designated §1.1502-77A is revised; paragraph (e) is redesignated as paragraph (f); and paragraph (g) is added to read as follows:

*§1.1502-77A Common parent agent for subsidiaries applicable for consolidated return years beginning before the date final regulations are published in the **Federal Register**.*

\* \* \* \* \*

(g) *Effective date.* This section applies to consolidated return years beginning before the date final regulations under §1.1502-77 are published in the **Federal Register**, except paragraph (e) of this section applies to statutory notices and waivers of the statute of limitations for taxable years for which the due date (without extensions) of the consolidated return is after September 7, 1988, and which begin before the date final regulations under §1.1502-77 are published in the **Federal Register**.

Par. 5. New §1.1502-77 is added to read as follows:

*§1.1502-77 Agent for the group.*

(a) *Scope of agency*—(1) *In general*—

(i) *Common parent.* Except as provided in paragraphs (a)(3) and (6) of this section, the common parent for a consolidated return year, for all matters relating to the tax liability for the consolidated return year, shall be the sole agent for—

(A) Each subsidiary in the group; and

(B) Any successor of any member (including the common parent).

(ii) *Other agents.* For purposes of this section, any corporation described in paragraphs (a)(1)(ii)(A) and (B) of this section will act as the agent in place of the common parent to the same extent and subject to the same limitations as are applicable to the common parent, and any reference in this section to the common parent will include any such other agent—

(A) Any corporation designated as the agent pursuant to paragraph (d) of this section to replace the common parent or a previously designated agent; and

(B) Any corporation that files a consolidated return as the common parent for a group, notwithstanding that such corporation is subsequently determined not to have been the proper agent for the claimed group.

(iii) *Successor.* For purposes of this section only, the term *successor* means a party that is primarily liable, pursuant to applicable law (including, for example,

by operation of a state or Federal merger statute), for the tax liability of the common parent or any subsidiary of the group. Such determination is made without regard to §1.1502-1(f)(4).

(iv) *Disregarded entity.* If a subsidiary of a group or its successor is or becomes a disregarded entity for Federal tax purposes, the common parent will continue to serve as the sole agent with respect to that subsidiary's tax liability under §1.1502-6 for consolidated return years during which it was a member of the group, even though the entity generally is not treated as a person separate from its owner for Federal tax purposes.

(v) *Transferee liability.* For purposes of assessing, paying and collecting transferee liability, any action taken by or directed to the common parent with respect to the group's tax liability will derivatively affect the liability of a transferee (or subsequent transferees) of a member, regardless of whether the member terminates its existence prior to such action.

(2) *Specific matters subject to agency.* As sole agent, the common parent is authorized to act in its own name for all matters relating to the tax liability for the consolidated return year. Except as provided in paragraphs (a)(3) and (6) of this section, no subsidiary or successor shall have authority to act for or to represent itself in any such matter. For example—

(i) Any election available to a subsidiary corporation in the computation of its separate taxable income must be made by the common parent, as must any change in an election previously made by or for a subsidiary corporation;

(ii) All correspondence will be carried on directly with the common parent;

(iii) The common parent shall file for all extensions of time, including extensions of time for payment of tax under section 6164;

(iv) The common parent in its own name will give waivers, give bonds, and execute closing agreements, offers in compromise, and all other documents, and any waiver or bond so given, or agreement, offer in compromise, or any other document so executed, shall be considered as having also been given or executed by each member or any successor thereof;

(v) The common parent will file claims for refund, and any refund will be made directly to and in the name of the common



parent and will discharge any liability of the Government to any member or any successor thereof with respect to such refund;

(vi) Notices of claim disallowance will be mailed only to the common parent, and the mailing to the common parent shall be considered as a mailing to each member or any successor thereof;

(vii) Notices of deficiencies will be mailed only to the common parent, and the mailing to the common parent shall be considered as a mailing to each member or any successor thereof;

(viii) The common parent will file petitions and conduct proceedings before the United States Tax Court, and any such petition shall be considered as also having been filed by each member or any successor thereof;

(ix) Any assessment of tax may be made in the name of the common parent, and an assessment naming the common parent shall be considered as an assessment with respect to each member and any successor thereof; and

(x) Notice and demand for payment of taxes will be given only to the common parent and such notice and demand will be considered as a notice and demand to each member or any successor thereof.

(3) *Matters reserved to subsidiaries.* Notwithstanding the role of the common parent as exclusive agent under paragraph (a)(1) of this section, the following matters shall be reserved to each subsidiary and, if applicable, to a successor of a subsidiary—

(i) The making of the consent required by §1.1502-75(a)(1);

(ii) The making of an election under section 936(e);

(iii) The making of an election to be treated as a DISC under §1.992-2; and

(iv) A change of the annual accounting period pursuant to §1.991-1(b)(3)(ii).

(4) *Term of agency*—(i) *In general.* Except as provided in paragraph (a)(4)(iii) of this section, the common parent for the consolidated return year shall remain the sole agent with respect to that year until its existence terminates, regardless of whether one or more subsidiaries become or cease to be members of the group at any time, whether the group files a consolidated return for any subsequent year, whether the common parent ceases to be the common parent or

a member of the group in any subsequent year, or whether the group continues pursuant to §1.1502-75(d) with a new common parent in any subsequent year.

(ii) *Replacement of agent designated by Commissioner.* If the Commissioner replaces a previously designated agent pursuant to paragraph (d)(2)(ii) of this section, the term of the replaced agent shall terminate when the Commissioner designates another agent.

(iii) *New common parent after a group structure change.* If the group continues in existence with a new common parent pursuant to §1.1502-75(d) during a consolidated return year, the common parent at the beginning of the year is the group's sole agent through the date of the transaction, and the new common parent becomes the continuing group's sole agent beginning the day after the transaction.

(5) *Identifying members in notices.* Notwithstanding the provisions of this paragraph (a)—

(i) Any notice of deficiency with respect to the tax for a consolidated return year will name each corporation that was a member of the group during any part of such period (but a failure to include the name of any such member will not affect the validity of the notice of deficiency as to the other members or their successors), and any notice of deficiency that is valid as to a member so named will be valid as to any successor of such member;

(ii) Any notice and demand for payment will name each corporation that was a member of the group during any part of the applicable consolidated return year (but a failure to include the name of any such member will not affect the validity of the notice and demand as to the other members or their successors), and any notice and demand for payment that is valid as to a member so named will be valid as to any successor of such member;

(iii) Any notice of a lien, any levy or any other proceeding to collect the amount of any assessment, after the assessment has been made, will name the taxpayer from which such collection is to be made;

(iv) Any notice described in paragraphs (a)(5)(i) through (iii) of this section that fails to include the name of a member during the consolidated return year shall still be valid as to that mem-

ber's successor, if such successor is named in the notice; and

(v) If a notice of deficiency fails to name a member or its successor, any assessment of tax based on such notice shall still be a valid assessment as to the other members or their successors.

(6) *Direct dealing with a member.* Notwithstanding the provisions of this paragraph (a), the Commissioner may, upon notifying the common parent, deal directly with any member of the group or any successor of a member with respect to its several liability for the consolidated tax of the group, in which event such member or successor shall have full authority to act for itself.

(b) *Copy of notice of deficiency to corporation which has ceased to be a member of the group.* If a corporation has ceased to be a member of the group during or after a consolidated return year and if such corporation or its successor files written notice of such cessation with the Commissioner, then the Commissioner upon request of such corporation or its successor will furnish a copy of any notice of deficiency with respect to the tax for a consolidated return year for which the corporation was a member or a copy of any notice and demand for payment of such deficiency. The filing of such written notification and request by a corporation or its successor shall not have the effect of limiting the scope of the agency of the common parent provided for in paragraph (a) of this section. Any failure by the Commissioner to comply with such written request shall not have the effect of limiting the tax liability under §1.1502-6 of such corporation or its successor.

(c) *References to member or subsidiary.* For purposes of this section, all references to a member or subsidiary shall include—

(1) Each corporation that was a member of the group during any part of such taxable year (except that any reference to a subsidiary shall not include the common parent); and

(2) Each claimed member the income of which was included in the consolidated return for such taxable year, notwithstanding that the tax liability of any such claimed member should have been computed on the basis of a separate return, or as a member of another consol-

idated group, under the provisions of §1.1502-75.

(d) *Termination of common parent*—  
(1) *Designation by common parent.* (i) If the common parent will terminate its existence, it shall—

(A) Designate, subject to the approval of the Commissioner, for each consolidated return year for which the period of limitations for assessment, for collection after assessment, or for claiming a credit or refund has not expired, one of the following to act as agent in its place—

(1) Any corporation that was a member of the group during any part of the consolidated return year and, except as provided in paragraph (e)(3)(ii) of this section, has not subsequently been disregarded as an entity separate from its owner or reclassified as a partnership for Federal tax purposes; or

(2) Any successor (as defined in paragraph (a)(1) of this section) of such a corporation or of the common parent that is a domestic corporation (and, except as provided in paragraph (e)(3)(ii) of this section, is not disregarded as an entity separate from its owner or classified as a partnership for Federal tax purposes), including a corporation that will become a successor at the time that the common parent ceases to exist; and

(B) Notify the Commissioner (under procedures prescribed by the Commissioner) of the designation, including—

(1) A statement by the designated corporation agreeing to serve as the group's new agent; and

(2) If the designated corporation was not itself a member of the group during the consolidated return year (because the designated corporation is a successor of a member of the group for the consolidated return year), a statement by the designated corporation acknowledging that it is or will be primarily liable for the consolidated tax as a successor of a member.

(ii) A designation under paragraph (d)(1)(i)(A) of this section will not be effective until it is approved by the Commissioner. The Commissioner's approval of such a designation will not be effective before the existence of the common parent terminates.

(2) *Designation by the Commissioner.*  
(i) In the event the common parent terminates its existence and no designation is made and approved under paragraph

(d)(1) of this section, the Commissioner may, with or without the request of any member of the group or its successor, at any time designate, effective immediately, a corporation described in paragraph (d)(1)(i)(A) of this section to act as the agent. The designation will be made in accordance with procedures prescribed by the Commissioner.

(ii) At the request of any member or successor of a member, the Commissioner may, but is not required to, replace an agent previously designated under this paragraph (d)(2) with another corporation described in paragraph (d)(1)(i)(A) of this section.

(iii) The Commissioner and the designated agent shall give notice of any designation to each corporation that was a member of the group during any part of the consolidated return year or its successor. A failure by the Commissioner and/or designated agent to notify any such member of the group or its successor does not invalidate the designation.

(3) *Absence of designation.* Until either a notice in writing designating a new agent has become effective or the Commissioner has designated a new agent, any notice of deficiency or other communication mailed to the common parent, even if no longer in existence, shall be considered as having been properly mailed to the agent of the group; or if the Commissioner has reason to believe that the existence of the common parent has terminated, he may, if he deems it advisable, deal directly with any member or its successor with respect to the member's several liability under §1.1502-6 without having to give notice pursuant to paragraph (a)(6) of this section.

(e) *Termination of a corporation's existence*—(1) *In general.* For purposes of paragraphs (a)(1)(v), (a)(4)(i), and (d) of this section, the existence of a corporation is deemed to terminate if—

(i) It ceases to exist under applicable law; or

(ii) Except as provided in paragraph (e)(3) of this section, it becomes, for Federal tax purposes, either—

(A) An entity that is disregarded as an entity separate from its owner; or

(B) An entity that is reclassified as a partnership.

(2) *Purported agency.* If the group's agent ceases to exist under circumstances

described in paragraph (e)(1)(ii) of this section without designating a new agent for the group pursuant to paragraph (d)(1) of this section, and the agent subsequently purports to act as agent for the group, any actions by that purported agent on behalf of the group will, to the extent determined appropriate by the Commissioner, have the same effect as if the agent's existence had not terminated.

(3) *Exceptions where no eligible corporation exists.* (i) For purposes of paragraphs (a)(4)(i) and (d) of this section, if a corporation becomes either disregarded as an entity separate from its owner or reclassified as a partnership for Federal tax purposes, its existence shall not be deemed to terminate if the effect of such termination would be that no corporation remains eligible to serve as the designated agent for the group's consolidated return year.

(ii) Similarly, an entity that is either disregarded as an entity separate from its owner or reclassified as a partnership for Federal tax purposes shall not be precluded from designation as an agent merely because of such classification if the effect of the inability to make such designation would be that no corporation remains eligible to serve as the designated agent for the group's consolidated return year.

(f) *Examples.* The following examples illustrate the principles of this section. In each example, as of January 1 of Year 1, the P group consists of P and its two subsidiaries, S and S-1. P, as the common parent of the P group, files consolidated returns for the P group in Years 1 and 2. On January 1 of Year 1, domestic corporations S-2, U, V, W, W-1, X, Y, Z and Z-1 are not related to P or the members of the P group. All corporations are calendar year taxpayers. Any surviving corporation in a merger is a successor as described in paragraph (a)(1)(iii) of this section. Any notification to the Commissioner of the designation of the P group's new agent also contains a statement signed on behalf of the designated agent that it consents to act as the group's new agent and, in the case of a successor, that it is primarily liable as a successor of a member. The examples are as follows:

*Example 1. Disposition of all group members.* On December 31 of Year 1, P sells all the stock of S-1 to X. On December 31 of Year 2, P distributes all the stock of S to P's shareholders. P files a separate return for Year 3. Although P is no longer a common

parent after Year 2, P remains the sole agent of the P group for Years 1 and 2. Except as provided in paragraph (a)(6) of this section, for as long as P remains in existence, only P may execute a waiver of the period of limitations on assessment on behalf of the group for Years 1 and 2.

*Example 2. Acquisition of common parent by another group.* The facts are the same as in *Example 1*, except on January 1 of Year 3, P is acquired by Y. P thereafter joins in the Y group consolidated return as a member of Y group. Although P is a member of Y group in Year 3, P remains the agent of the P group for Years 1 and 2. Except as provided in paragraph (a)(6) of this section, for as long as P remains in existence, only P may execute a waiver of the period of limitations on assessment on behalf of the P group for Years 1 and 2.

*Example 3. Merger of common parent—designation of remaining member as new agent.* On December 31 of Year 1, P sells all the stock of S-1 to X. On July 1 of Year 2, P acquires all the stock of S-2. On November 30 of Year 2, P distributes all the stock of S to P's shareholders. On January 1 of Year 3, P merges into Y corporation. Just before the merger, P notifies the Commissioner in writing of the planned merger and of its designation of S as the new agent of the P group for Years 1 and 2. S is the only member that P can designate as the new agent for both Years 1 and 2 because it is the only subsidiary that was a member of P group during part of both years. Although S-2 is the only remaining subsidiary of the P group when P merges into Y, S-2 was a member of the P group only in Year 2. For that reason, S-2 cannot be the group's agent for Year 1. Alternatively, P could designate a different agent for each year, selecting S or S-1 as the new agent for Year 1; and S or S-2 as the new agent for Year 2. P could also designate its successor Y as the new agent for both Years 1 and 2.

*Example 4. Forward triangular merger of common parent.* On January 1 of Year 3, P merges with and into Z-1, a subsidiary of Z, in a forward triangular merger described in section 368(a)(1)(A) and (a)(2)(D). The transaction constitutes a reverse acquisition under §1.1502-75(d)(3)(i) because P's shareholders receive more than 50% of Z's stock in exchange for all of P's stock. Just before the merger, P notifies the Commissioner in writing of the planned merger and its designation of Z-1, the corporation that will survive the planned merger, as the new agent of the P group for Years 1 and 2. Because Z-1 will be P's successor (within the meaning of paragraph (a)(1) of this section) after the planned merger, P may designate Z-1 as the new agent for the P group for Years 1 and 2, pursuant to paragraph (d)(1) of this section. Alternatively, P could have designated S or S-1 as the new agent for the P group for Years 1 and 2. Although Z is the new common parent of the P group, which continues pursuant to §1.1502-75(d)(3)(i), P may not designate Z as the new agent for Years 1 and 2 because Z was not a member of the group during any part of Years 1 or 2 and is not a successor of P or any other member of the group.

*Example 5. Reverse triangular merger of common parent.* On March 1 of Year 3, W-1, a subsidiary of W, merges into P, in a reverse triangular merger described in section 368(a)(1)(A) and (a)(2)(E). P survives the merger with W-1. The transaction constitutes a reverse acquisition under

§1.1502-75(d)(3)(i) because P's shareholders receive more than 50% of W's stock in exchange for all of P's stock. Under paragraph (a) of this section, P remains the agent of the P group for Years 1 and 2, even though the P group continues with W as its new common parent. Because the transaction constitutes a reverse acquisition, the P group is treated as remaining in existence with W as its common parent. Before March 2 of Year 3, P is the sole agent for the P group for Year 3. Beginning on March 2 of Year 3, W becomes the sole agent for the P group with respect to all of Year 3 (including the period through March 1) and subsequent consolidated return years.

*Example 6. Reverse triangular merger of common parent—spinoff of common parent.* The facts are the same as in *Example 5*, except that on April 1 of Year 3, P distributes the stock of its subsidiaries S and S-1 to W, and W then distributes the stock of P to the W shareholders. Although P is no longer a member of the P group and W is the continuing P group's new common parent, P remains the agent for the P group under paragraph (a) of this section for Years 1 and 2. Before March 2 of Year 3, P is the sole agent for the P group for Year 3. Beginning on March 2 of Year 3, W becomes the sole agent for the P group with respect to Year 3 (including the period through March 1) and subsequent consolidated return years.

*Example 7. Qualified stock purchase and section 338 election.* On March 31 of Year 2, V purchases the stock of P in a qualified stock purchase (within the meaning of section 338(d)(3)), and V makes a timely election pursuant to section 338(g) with respect to P. Section 338(a)(2) provides that P is treated as a new corporation as of the beginning of the day after the acquisition date for purposes of subtitle A. For purposes of other subtitles, such as subtitle F (Procedure and Administration), however, new P is treated as a continuation of old P. Therefore, new P remains the agent of the P group for Year 1 and the period ending March 31 of Year 2 (short Year 2). Except as provided in paragraph (a)(6) of this section, for as long as new P remains in existence, only new P may execute a waiver of the period of limitations on assessment on behalf of the P group for Year 1 and short Year 2.

*Example 8. Fraudulent conveyance of assets.* On March 15 of Year 2, P files a consolidated return that includes the income of S and S-1 for Year 1. On December 1 of Year 2, S-1 transfers assets having a fair market value of \$100x to U in exchange for \$10x. This transfer of assets for less than fair market value constitutes a fraudulent conveyance under applicable state law. On March 1 of Year 5, P executes a waiver extending to December 31 of Year 6 the period of limitations on assessment with respect to the group's Year 1 consolidated return. On February 1 of Year 6, the Commissioner issues a notice of deficiency to P asserting a deficiency of \$30x for the P group's Year 1 consolidated tax liability. P does not file a petition for redetermination in the Tax Court, and the Commissioner makes a timely assessment against the P group. P, S and S-1 are all insolvent and are unable to pay the deficiency. On February 1 of Year 8, the Commissioner sends a notice of transferee liability to U, which does not file a petition in the Tax Court. On August 1 of Year 8, the Commissioner assesses the amount of the P group's deficiency against U. Under sec-

tion 6901(c), the Commissioner may assess U's transferee liability within one year after the expiration of the period of limitations against the transferor S-1. By operation of section 6213(a) and 6503(a), the issuance of the notice of deficiency to P and the expiration of the 90-day period for filing a petition in the Tax Court have the effect of further extending by 150 days the P group's limitations period on assessment from the previously extended date of December 31 of Year 6 to May 30 of Year 7. Pursuant to paragraph (a)(1)(v) of this section, the waiver executed by P on March 1 of Year 5 to extend the period of limitations on assessment to December 31 of Year 6 and the further extension of the P group's limitations period to May 30 of Year 7 (by operation of sections 6213(a) and 6503(a)) have the derivative effect of extending the period of limitations on assessment of U's transferee liability to May 30 of Year 8. By operation of section 6901(f), the issuance of the notice of transferee liability to U and the expiration of the 90-day period for filing a petition in the Tax Court have the effect of further extending the limitations period on assessment of U's liability as a transferee by 150 days, from May 30 of Year 8 to October 27 of Year 8. Accordingly, the Commissioner may send a notice of transferee liability to U at any time on or before May 30 of Year 8 and assess the unpaid liability against U at any time on or before October 27 of Year 8. The result would be the same even if S-1 ceased to exist before March 1 of Year 5, the date P executed the waiver.

(g) *Cross-reference.* For further rules applicable to groups that include insolvent financial institutions, see §301.6402-7 of this chapter.

(h) *Effective date—(1) Application.* This section applies with respect to taxable years beginning on or after the date final regulations are published in the **Federal Register**.

(2) *Prior law.* For taxable years beginning before the date final regulations are published in the **Federal Register**, see §1.1502-77A.

Par. 6. Section 1.1502-77T(a) is redesignated as §1.1502-77A(e) and §1.1502-77T is removed.

Par. 7. The amendments to §1.1502-78(a), as contained in the notice of proposed rulemaking (LR-97-79) published in the **Federal Register** on July 31, 1984 (49 F.R. 30528), are withdrawn.

Par. 8. Section 1.1502-78 is amended as follows:

1. Paragraph (a) is revised.

2. Paragraph (b)(1) is amended by adding the language “for the carryback year (or agent designated under §1.1502-77(d) for the carryback year)” at the end of the first sentence.

3. In paragraph (c), the last sentence of *Example (1)* is amended by adding the



language “for the carryback year” after “parent.”

4. In paragraph (c), the last sentence of *Example (2)* is amended by removing the language “S-1” and adding “P” in its place.

5. In paragraph (c), *Example (3)*, the seventh sentence is amended by removing “Z must” and adding “X must” in its place.

6. Paragraphs (e) and (f) are added.

The revision and additions read as follows:

#### *§1.1502-78 Tentative carryback adjustments.*

(a) *General rule.* If a group has a consolidated net operating loss, a consolidated net capital loss, or a consolidated unused business credit for any taxable year, then any application under section 6411 for a tentative carryback adjustment of the taxes for a consolidated return year or years preceding such year shall be made by the common parent corporation for the carryback year (or agent designated under §1.1502-77(d) for the carryback year) to the extent such loss or unused business credit is not apportioned to a corporation for a separate return year pursuant to §1.1502-21(b), 1.1502-22(b), or 1.1502-79(c). In the case of the portion of a consolidated net operating loss or consolidated net capital loss or consolidated unused business credit to which the preceding sentence does not apply and which is to be carried back to a corporation that was not a member of a consolidated group in the carryback year, the corporation to which such loss or credit is attributable shall make any application under section 6411. In the case of a net capital loss or net operating loss or unused business credit arising in a separate return year which may be carried back to a consolidated return year, after taking into account the application of §1.1502-21(b)(3)(ii)(B) with respect to any net operating loss arising in another consolidated group, the common parent for the carryback year (or agent designated under §1.1502-77(d) for the carryback year) shall make any application under section 6411.

\* \* \* \* \*

(e) *Cross-reference.* For further rules applicable to groups that include insol-

vent financial institutions, see §301.6402-7 of this chapter.

(f) *Effective date*—(1) *In general.* This section applies to taxable years to which a loss or credit may be carried back and for which the due date (without extensions) of the original return is after the date final regulations are published in the **Federal Register**.

(2) *Prior law.* For taxable years to which a loss or credit may be carried back and for which the due date (without extensions) is on or before the date final regulations are published in the **Federal Register**, see §1.1502-78 in effect prior to the date final regulations are published in the **Federal Register**, as contained in 26 CFR part 1 revised as of April 1, 2000.

Robert E. Wenzel,  
*Deputy Commissioner  
of Internal Revenue.*

(Filed by the Office of the Federal Register on September 25, 2000, 8:45 a.m., and published in the issue of the Federal Register for September 26, 2000, 65 F.R. 57755)

### **Form 8870, Information Return for Transfers Associated With Certain Personal Benefit Contracts**

#### **Announcement 2000-82**

Notice 2000-24, 2000-17 I.R.B. 952, advises organizations that pay premiums on “personal benefit contracts,” as that term is used in section 170(f)(10) of the Internal Revenue Code, of the need to file Form 8870, *Information Return for Transfers Associated With Certain Personal Benefit Contracts*. For taxable years beginning prior to January 1, 2000, such organizations must file Form 8870 by the later of 90 days after the date of the Service’s announcement in the Internal Revenue Bulletin of the availability of Form 8870, or the date the organization is required to file its annual information return.

This announcement advises organizations of the availability of Form 8870. The 90-day period referred to in the Notice begins on the date of publication of this announcement.

### **Request for Comments Regarding Need for Guidance Clarifying Application of the Internal Revenue Code to Use of the Internet by Exempt Organizations**

#### **Announcement 2000-84**

The Internal Revenue Service is considering the necessity of issuing guidance that would clarify the application of the Internal Revenue Code to use of the Internet by exempt organizations. Accordingly, the Service is soliciting public comment concerning the application of Code provisions governing exempt organizations to activities they conduct on the Internet. The Service has made no final decision concerning the need for additional guidance of general applicability and may conclude no further action is necessary.

#### **BACKGROUND**

Exempt organizations, like other organizations, are increasingly turning to the Internet to carry on their activities. By publishing a webpage on the Internet, an exempt organization can provide the general public with information about the organization, its activities, and issues of concern to the organization, as well as immediate access to websites of other organizations. An exempt organization can provide information to subscribers about issues of concern to the organization as well as enable people with common interests to share information via the Internet through a variety of methods (such as mailing lists, news groups, listserves, chat rooms, and forums).

#### *General Issues*

Exempt organizations use the Internet to carry on activities that otherwise can be conducted through other media, such as radio or television broadcasts, print publications, or direct mailings. The growing use of the Internet by exempt organizations raises questions regarding whether clarification is needed concerning the application of the Code to Internet activities. The questions include the following:

- Does a website constitute a single publication or communication? If not, how should it be separated into distinct pub-

lications or communications?

- When allocating expenses for a website, what methodology is appropriate? For example, should allocations be based on webpages (which, unlike print publications, may not be of equal size)?
- Unlike other publications of an exempt organization, a website may be modified on a daily basis. To what extent and by what means should an exempt organization maintain the information from prior versions of the organization's website?
- To what extent are statements made by subscribers to a forum, such as a listserv or newsgroup, attributable to an exempt organization that maintains the forum? Does attribution vary depending on the level of participation of the exempt organization in maintaining the forum (e.g., if the organization moderates discussion, acts as editor, etc.)?

#### *Political and Lobbying Activities*

Charitable organizations described in section 501(c)(3) may not intervene in political campaigns and may only attempt to influence legislation as an insubstantial part of their activities. If the charitable organization makes an election under section 501(h), an expenditure test is applied in determining whether the organization has engaged in substantial lobbying activities, with different limits applicable for direct and grassroots lobbying.

When a charitable organization engages in advocacy on the Internet, questions arise as to whether it is conducting political or lobbying activity, and if so, to what extent. This situation is further complicated by the affiliation of charitable organizations with other organizations engaging in political or lobbying activities on the Internet. The ease with which different websites may be linked electronically (through a "hyperlink") raises a concern about whether the message of a linked website is attributable to the charitable organization. The Service is considering whether clarification is needed on how to apply the prohibition on political campaign intervention and substantial lobbying activity for charitable organizations engaging in activities on the Internet. Questions include the following:

- What facts and circumstances are relevant in determining whether informa-

tion on a charitable organization's website about candidates for public office constitutes intervention in a political campaign by the charitable organization or is permissible charitable activity consistent with the principles set forth in Rev. Rul. 78-248, 1978-1 C.B. 154, and Rev. Rul. 86-95, 1986-2 C.B. 73 (dealing with voter guides and candidate debates)?

- Does providing a hyperlink on a charitable organization's website to another organization that engages in political campaign intervention result in *per se* prohibited political intervention? What facts and circumstances are relevant in determining whether the hyperlink constitutes a political campaign intervention by the charitable organization?
- For charitable organizations that have not made the election under section 501(h), what facts and circumstances are relevant in determining whether lobbying communications made on the Internet are a substantial part of the organization's activities? For example, are location of the communication on the website (main page or subsidiary page) or number of hits relevant?
- Does providing a hyperlink to the website of another organization that engages in lobbying activity constitute lobbying by a charitable organization? What facts and circumstances are relevant in determining whether the charitable organization has engaged in lobbying activity (for example, does it make a difference if lobbying activity is on the specific webpage to which the charitable organization provides the hyperlink rather than elsewhere on the other organization's website)?
- To determine whether a charitable organization that has made the election under section 501(h) has engaged in grass roots lobbying on the Internet, what facts and circumstances are relevant regarding whether the organization made a "call to action"?
- Does publication of a webpage on the Internet by a charitable organization that has made an election under section 501(h) constitute an appearance in the mass media? Does an email or listserv communication by the organization constitute an appearance in mass media if it is sent to more than 100,000 people and fewer than half of those people are

members of the organization?

- What facts and circumstances are relevant in determining whether an Internet communication (either a limited access website or a listserv or email communication) is a communication directly to or primarily with members of the organization for a charitable organization that has made an election under section 501(h)?

#### *Advertising and Other Business Activities*

Many exempt organizations receive payment from companies to display advertising messages on the organization's website. Some exempt organizations have banners on their websites containing information about and a link to other organizations in exchange for a similar banner on the other organizations' website.

Exempt organizations may also provide hyperlinks on their websites to companies that sponsor their activities. Some organizations receive payments based upon a percentage of sales for referring customers to another website, while others receive payments based upon the number of persons who use the hyperlink to go to the other webpage. In addition, a number of exempt organizations use the Internet as another outlet for their own sales activity.

Some organizations operate "virtual trade shows," an attempt to replicate trade shows on the Internet. Some of these virtual trade shows simply consist of hyperlinks to industry suppliers' websites, while others also include displays with educational information.

The Service is considering whether clarification is needed regarding whether the income received from these activities is subject to the unrelated business income tax, and if so, how the income and expenses related to the activity are calculated. Questions include the following:

- To what extent are business activities conducted on the Internet regularly carried on under section 512? What facts and circumstances are relevant in determining whether these activities on the Internet are regularly carried on?
- Are there any circumstances under which the payment of a percentage of sales from customers referred by the exempt organization to another website would be substantially related under section 513?

- Are there any circumstances under which an online “virtual trade show” qualifies as an activity of a kind “traditionally conducted” at trade shows under section 513(d)?

Comments concerning the application of section 513(i), which governs the treatment of qualified sponsorship payments, to Internet activities were requested in connection with the Notice of Proposed Rulemaking (REG-209601-92) published in the Federal Register on March 1, 2000.

#### *Solicitation of Contributions*

There are numerous Code provisions regulating the solicitation and receipt of charitable contributions. For example, exempt organizations not eligible to receive tax-deductible charitable contributions are required under section 6113 to disclose in certain solicitations for contributions that such contributions are not deductible for federal income tax purposes as charitable contributions. Charitable organizations that receive certain “*quid pro quo*” contributions in excess of \$75 are required under section 6115 to provide a written statement to the donor that indicates that the charitable deduction is limited to the amount paid by the donor in excess of the value of the goods or services provided by the organization and that provides a good faith estimate of that value. Under section 170(f)(8), donors making contributions of \$250 or more to a charitable organization must substantiate the contribution with a

contemporaneous written acknowledgment from the charitable organization in order for the deduction to be allowed.

An increasing number of exempt organizations solicit contributions on the Internet. In some instances, the organization’s website merely indicates where to send contributions to the organization. In other cases, the organization is able to accept contributions on the Internet, either directly or through a third party that provides a secure connection for credit card transactions. The Service is considering the need for clarification regarding such activities, including the following:

- Are solicitations for contributions made on the Internet (either on an organization’s website or by email) in “written or printed form” for purposes of section 6113? If so, what facts and circumstances are relevant in determining whether a disclosure is in a “conspicuous and easily recognizable format”?
- Does an organization meet the requirements of section 6115 for “*quid pro quo*” contributions with a webpage confirmation that may be printed out by the contributor or by sending a confirmation email to the donor?
- Does a donor satisfy the requirement under section 170(f)(8) for a written acknowledgment of a contribution of \$250 or more with a printed webpage confirmation or copy of a confirmation email from the donee organization?

#### REQUEST FOR PUBLIC COMMENT

The Service is soliciting public comment regarding the need for additional guidance clarifying the application of the Code to exempt organizations’ Internet activities. The Service requests comments not only on the situations described above, but also on any other issues concerning application of provisions of the Code in a fair and neutral manner to exempt organizations’ Internet activities.

Public comments should be submitted in writing on or before February 13, 2001. Comments should be sent to the following address:

Internal Revenue Service  
1111 Constitution Ave, NW  
Washington, DC 20224  
Attn: Judith E. Kindell  
T:EO

Comments may also be sent electronically via the Internet to \*TE/GE-Exempt-2@irs.gov.

#### DRAFTING INFORMATION

The principal author of this announcement is Judith E. Kindell of Exempt Organizations. For further information regarding this announcement contact Judith E. Kindell at (202) 622-6494 (not a toll-free call).



## Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

## Abbreviations

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

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

E.O.—Executive Order.  
ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance 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.—Statements of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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