

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. 2009-9, page 735.

Tax treatment of losses. This ruling addresses the tax treatment of losses from criminally fraudulent investment arrangements that take the form of “Ponzi” schemes. Rev. Rul. 71-381 obsoleted in part.

Rev. Rul. 2009-10, page 738.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for April 2009.

Rev. Proc. 2009-19, page 747.

This procedure provides guidance to taxpayers on electing the 3, 4, or 5-year carryback of net operating losses of small businesses under section 1211 of the American Recovery and Reinvestment Tax Act of 2009.

Rev. Proc. 2009-20, page 749.

This procedure provides an optional safe harbor method for eligible taxpayers to deduct theft losses from criminally fraudulent investment arrangements that take the form of “Ponzi” schemes.

EMPLOYEE PLANS

Notice 2009-22, page 741.

Asset valuation under section 430(g)(3)(B) as amended by WRERA. This notice provides interim rules regarding asset valuation methods that are permitted to be used by single employer defined benefit pension plans for minimum funding

purposes pursuant to changes made by the Worker, Retiree, and Employer Recovery Act of 2008, Public Law 110-458 (WRERA). This notice also provides automatic approval for a change in asset valuation method for plan years beginning during 2009 to adopt any permissible asset valuation method.

EXEMPT ORGANIZATIONS

Announcement 2009-25, page 755.

This announcement invites public comments on how to improve the Internal Revenue Service’s Exempt Organizations website (www.irs.gov/eo).

Announcement 2009-26, page 755.

This announcement invites public comments on the implementation and content of the Exempt Organization Academic Institution Initiative.

(Continued on the next page)

Finding Lists begin on page ii.



Announcement 2009–27, page 756.

The IRS has revoked its determination that Rocky Mountain Big Horn Sheep Foundation of Red River, MN; Skippers Learning Center of Lake City, SC; Reliable Cash Management Association of Buffalo Grove, IL; Pecan Park Learning Center of Jackson, MS; Brucker Charitable Foundation of Mountain Home, TX; N. U. Yoga Ashrama in America of Winter, WI; Housing Development Group of Denver, CO; National Business Fellowship Foundation of Raeford, NC; GIK Foundation of Bellevue, WA; Debt Free Foundation, Inc., of Provo, UT; Urban Light Community Development of Houston, TX; Sweet Life Program of Las Vegas, NV; Ladoras Family Services, Inc., of Compton, CA; Robert and Donna Herbolich Charitable Supporting of Hudson, OH; Three Point Volunteer Fire Department, Inc., of Williamsburg, KY; Advance Practice Foundation, Inc., of Basking Ridge, NJ; Goodwill Industries of Greater Cleveland, Inc., of Cleveland, OH; World Project, Inc., of Temecula, CA; Sandton Lifestyles of Los Angeles, CA; Dunn-Mason Foundation of Farmington Hills, MI; and Walter E & Romell A King Foundation of Gary, IN; qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

ADMINISTRATIVE**Announcement 2009–29, page 757.**

This announcement provides notice of a public hearing on proposed regulations (REG-158747–06, 2009–4 I.R.B. 362) relating to withholding under section 3402(t) of the Code. The regulations reflect changes in the law made by the Tax Increase Prevention and Reconciliation Act of 2005 that require Federal, State, and local government entities to withhold income tax when making payments to persons providing property or services. The regulations provide guidance to assist the government entities in complying with section 3402(t). The regulations also provide certain guidance to persons receiving payments for property or services from government entities. The public hearing is scheduled for April 16, 2009.

The IRS Mission

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

the tax law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. See Rev. Rul. 2009-10, page 738.

Section 165.—Losses.

26 CFR 1.165-8: *Theft losses.*
(Also: §§ 63, 67, 68, 172, 1311, 1312, 1313, 1314, 1341.)

Tax treatment of losses. This ruling addresses the tax treatment of losses from criminally fraudulent investment arrangements that take the form of “Ponzi” schemes. Rev. Rul. 71-381 obsoleted in part.

Rev. Rul. 2009-9

ISSUES

(1) Is a loss from criminal fraud or embezzlement in a transaction entered into for profit a theft loss or a capital loss under § 165 of the Internal Revenue Code?

(2) Is such a loss subject to either the personal loss limits in § 165(h) or the limits on itemized deductions in §§ 67 and 68?

(3) In what year is such a loss deductible?

(4) How is the amount of such a loss determined?

(5) Can such a loss create or increase a net operating loss under § 172?

(6) Does such a loss qualify for the computation of tax provided by § 1341 for the restoration of an amount held under a claim of right?

(7) Does such a loss qualify for the application of §§ 1311-1314 to adjust tax liability in years that are otherwise barred by the period of limitations on filing a claim for refund under § 6511?

FACTS

A is an individual who uses the cash receipts and disbursements method of accounting and files federal income tax returns on a calendar year basis. B holds himself out to the public as an investment advisor and securities broker.

In Year 1, A, in a transaction entered into for profit, opened an investment account with B, contributed \$100x to the account, and provided B with power of attorney to use the \$100x to purchase and sell securities on A's behalf. A instructed B to reinvest any income and gains earned on the investments. In Year 3, A contributed an additional \$20x to the account.

B periodically issued account statements to A that reported the securities purchases and sales that B purportedly made in A's investment account and the balance of the account. B also issued tax reporting statements to A and to the Internal Revenue Service that reflected purported gains and losses on A's investment account. B also reported to A that no income was earned in Year 1 and that for each of the Years 2 through 7 the investments earned \$10x of income (interest, dividends, and capital gains), which A included in gross income on A's federal income tax returns.

At all times prior to Year 8 and part way through Year 8, B was able to make distributions to investors who requested them. A took a single distribution of \$30x from the account in Year 7.

In Year 8, it was discovered that B's purported investment advisory and brokerage activity was in fact a fraudulent investment arrangement known as a “Ponzi” scheme. Under this scheme, B purported to invest cash or property on behalf of each investor, including A, in an account in the investor's name. For each investor's account, B reported investment activities and resulting income amounts that were partially or wholly fictitious. In some cases, in response to requests for withdrawal, B made payments of purported income or principal to investors. These payments were made, at least in part, from amounts that other investors had invested in the fraudulent arrangement.

When B's fraud was discovered in Year 8, B had only a small fraction of the funds that B reported on the account statements that B issued to A and other investors. A did not receive any reimbursement or other recovery for the loss in Year 8. The period of limitation on filing a claim for refund under § 6511 has not yet expired for Years

5 through 7, but has expired for Years 1 through 4.

B's actions constituted criminal fraud or embezzlement under the law of the jurisdiction in which the transactions occurred. At no time prior to the discovery did A know that B's activities were a fraudulent scheme. The fraudulent investment arrangement was not a tax shelter as defined in § 6662(d)(2)(C)(ii) with respect to A.

LAW AND ANALYSIS

Issue 1. *Theft loss.*

Section 165(a) allows a deduction for losses sustained during the taxable year and not compensated by insurance or otherwise. For individuals, § 165(c)(2) allows a deduction for losses incurred in a transaction entered into for profit, and § 165(c)(3) allows a deduction for certain losses not connected to a transaction entered into for profit, including theft losses. Under § 165(e), a theft loss is sustained in the taxable year the taxpayer discovers the loss. Section 165(f) permits a deduction for capital losses only to the extent allowed in §§ 1211 and 1212. In certain circumstances, a theft loss may be taken into account in determining gains or losses for a taxable year under § 1231.

For federal income tax purposes, “theft” is a word of general and broad connotation, covering any criminal appropriation of another's property to the use of the taker, including theft by swindling, false pretenses and any other form of guile. *Edwards v. Bromberg*, 232 F.2d 107 (5th Cir. 1956); see also § 1.165-8(d) of the Income Tax Regulations (“theft” includes larceny and embezzlement). A taxpayer claiming a theft loss must prove that the loss resulted from a taking of property that was illegal under the law of the jurisdiction in which it occurred and was done with criminal intent. Rev. Rul. 72-112, 1972-1 C.B. 60. However, a taxpayer need not show a conviction for theft. *Vietzke v. Commissioner*, 37 T.C. 504, 510 (1961), *acq.*, 1962-2 C.B. 6.

The character of an investor's loss related to fraudulent activity depends, in part, on the nature of the investment. For example, a loss that is sustained on the

worthlessness or disposition of stock acquired on the open market for investment is a capital loss, even if the decline in the value of the stock is attributable to fraudulent activities of the corporation's officers or directors, because the officers or directors did not have the specific intent to deprive the shareholder of money or property. *See* Rev. Rul. 77-17, 1977-1 C.B. 44.

In the present situation, unlike the situation in Rev. Rul. 77-17, *B* specifically intended to, and did, deprive *A* of money by criminal acts. *B*'s actions constituted a theft from *A*, as theft is defined for § 165 purposes. Accordingly, *A*'s loss is a theft loss, not a capital loss.

Issue 2. Deduction limitations.

Section 165(h) imposes two limitations on casualty loss deductions, including theft loss deductions, for property not connected either with a trade or business or with a transaction entered into for profit.

Section 165(h)(1) provides that a deduction for a loss described in § 165(c)(3) (including a theft) is allowable only to the extent that the amount exceeds \$100 (\$500 for taxable years beginning in 2009 only).

Section 165(h)(2) provides that if personal casualty losses for any taxable year (including theft losses) exceed personal casualty gains for the taxable year, the losses are allowed only to the extent of the sum of the gains, plus so much of the excess as exceeds ten percent of the individual's adjusted gross income.

Rev. Rul. 71-381, 1971-2 C.B. 126, concludes that a taxpayer who loans money to a corporation in exchange for a note, relying on financial reports that are later discovered to be fraudulent, is entitled to a theft loss deduction under § 165(c)(3). However, § 165(c)(3) subsequently was amended to clarify that the limitations applicable to personal casualty and theft losses under § 165(c)(3) apply only to those losses that are not connected with a trade or business or a transaction entered into for profit. Tax Reform Act of 1984, Pub. L. No. 98-369, § 711 (1984). As a result, Rev. Rul. 71-381 is obsolete to the extent that it holds that theft losses incurred in a transaction entered into for profit are deductible under § 165(c)(3), rather than under § 165(c)(2).

In opening an investment account with *B*, *A* entered into a transaction for profit. *A*'s theft loss therefore is deductible under § 165(c)(2) and is not subject to the § 165(h) limitations.

Section 63(d) provides that itemized deductions for an individual are the allowable deductions other than those allowed in arriving at adjusted gross income (under § 62) and the deduction for personal exemptions. A theft loss is not allowable under § 62 and is therefore an itemized deduction.

Section 67(a) provides that miscellaneous itemized deductions may be deducted only to the extent the aggregate amount exceeds two percent of adjusted gross income. Under § 67(b)(3), losses deductible under § 165(c)(2) or (3) are excepted from the definition of miscellaneous itemized deductions.

Section 68 provides an overall limit on itemized deductions based on a percentage of adjusted gross income or total itemized deductions. Under § 68(c)(3), losses deductible under § 165(c)(2) or (3) are excepted from this limit.

Accordingly, *A*'s theft loss is an itemized deduction that is not subject to the limits on itemized deductions in §§ 67 and 68.

Issue 3. Year of deduction.

Section 165(e) provides that any loss arising from theft is treated as sustained during the taxable year in which the taxpayer discovers the loss. Under §§ 1.165-8(a)(2) and 1.165-1(d), however, if, in the year of discovery, there exists a claim for reimbursement with respect to which there is a reasonable prospect of recovery, no portion of the loss for which reimbursement may be received is sustained until the taxable year in which it can be ascertained with reasonable certainty whether or not the reimbursement will be received, for example, by a settlement, adjudication, or abandonment of the claim. Whether a reasonable prospect of recovery exists is a question of fact to be determined upon examination of all facts and circumstances.

A may deduct the theft loss in Year 8, the year the theft loss is discovered, provided that the loss is not covered by a claim for reimbursement or other recovery as to which *A* has a reasonable prospect of re-

covery. To the extent that *A*'s deduction is reduced by such a claim, recoveries on the claim in a later taxable year are not includible in *A*'s gross income. If *A* recovers a greater amount in a later year, or an amount that initially was not covered by a claim as to which there was a reasonable prospect of recovery, the recovery is includible in *A*'s gross income in the later year under the tax benefit rule, to the extent the earlier deduction reduced *A*'s income tax. *See* § 111; § 1.165-1(d)(2)(iii). Finally, if *A* recovers less than the amount that was covered by a claim as to which there was a reasonable prospect of recovery that reduced the deduction for theft in Year 8, an additional deduction is allowed in the year the amount of recovery is ascertained with reasonable certainty.

Issue 4. Amount of deduction.

Section 1.165-8(c) provides that the amount deductible in the case of a theft loss is determined consistently with the manner described in § 1.165-7 for determining the amount of a casualty loss, considering the fair market value of the property immediately after the theft to be zero. Under these provisions, the amount of an investment theft loss is the basis of the property (or the amount of money) that was lost, less any reimbursement or other compensation.

The amount of a theft loss resulting from a fraudulent investment arrangement is generally the initial amount invested in the arrangement, plus any additional investments, less amounts withdrawn, if any, reduced by reimbursements or other recoveries and reduced by claims as to which there is a reasonable prospect of recovery. If an amount is reported to the investor as income in years prior to the year of discovery of the theft, the investor includes the amount in gross income, and the investor reinvests the amount in the arrangement, this amount increases the deductible theft loss.

Accordingly, the amount of *A*'s theft loss for purposes of § 165 includes *A*'s original Year 1 investment (\$100 x) and additional Year 3 investment (\$20 x). *A*'s loss also includes the amounts that *A* reported as gross income on *A*'s federal income tax returns for Years 2 through 7 (\$60 x). *A*'s loss is reduced by the amount of money distributed to *A* in Year 7 (\$30 x). If *A* has

a claim for reimbursement with respect to which there is a reasonable prospect of recovery, A may not deduct in Year 8 the portion of the loss that is covered by the claim.

Issue 5. Net operating loss.

Section 172(a) allows as a deduction for the taxable year the aggregate of the net operating loss carryovers and carrybacks to that year. In computing a net operating loss under § 172(c) and (d)(4), nonbusiness deductions of noncorporate taxpayers are generally allowed only to the extent of nonbusiness income. For this purpose, however, any deduction for casualty or theft losses allowable under § 165(c)(2) or (3) is treated as a business deduction. Section 172(d)(4)(C).

Under § 172(b)(1)(A), a net operating loss generally may be carried back 2 years and forward 20 years. However, under § 172(b)(1)(F), the portion of an individual's net operating loss arising from casualty or theft may be carried back 3 years and forward 20 years.

Section 1211 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (February 17, 2009), amends § 172(b)(1)(H) of the Internal Revenue Code to allow any taxpayer that is an eligible small business to elect either a 3, 4, or 5-year net operating loss carryback for an "applicable 2008 net operating loss."

Section 172(b)(1)(H)(iv) provides that the term "eligible small business" has the same meaning given that term by § 172(b)(1)(F)(iii), except that § 448(c) is applied by substituting "\$15 million" for "\$5 million" in each place it appears. Section 172(b)(1)(F)(iii) provides that a small business is a corporation or partnership that meets the gross receipts test of § 448(c) for the taxable year in which the loss arose (or in the case of a sole proprietorship, that would meet such test if the proprietorship were a corporation).

Because § 172(d)(4)(C) treats any deduction for casualty or theft losses allowable under § 165(c)(2) or (3) as a business deduction, a casualty or theft loss an individual sustains after December 31, 2007, is considered a loss from a "sole proprietorship" within the meaning of § 172(b)(1)(F)(iii). Accordingly, an individual may elect either a 3, 4, or 5-year net operating loss carryback for

an applicable 2008 net operating loss, provided the gross receipts test provided in § 172(b)(1)(H)(iv) is satisfied. *See* Rev. Proc. 2009-19, 2009-14 I.R.B. 747 (April 6, 2009).

To the extent A's theft loss deduction creates or increases a net operating loss in the year the loss is deducted, A may carry back up to 3 years and forward up to 20 years the portion of the net operating loss attributable to the theft loss. If A's loss is an applicable 2008 net operating loss and the gross receipts test in § 172(b)(1)(H)(iv) is met, A may elect either a 3, 4, or 5-year net operating loss carryback for the applicable 2008 net operating loss.

Issue 6. Restoration of amount held under claim of right.

Section 1341 provides an alternative tax computation formula intended to mitigate against unfavorable tax consequences that may arise as a result of including an item in gross income in a taxable year and taking a deduction for the item in a subsequent year when it is established that the taxpayer did not have a right to the item. Section 1341 requires that: (1) an item was included in gross income for a prior taxable year or years because it appeared that the taxpayer had an unrestricted right to the item, (2) a deduction is allowable for the taxable year because it was established after the close of the prior taxable year or years that the taxpayer did not have a right to the item or to a portion of the item, and (3) the amount of the deduction exceeds \$3,000. Section 1341(a)(1) and (3).

If § 1341 applies, the tax for the taxable year is the lesser of: (1) the tax for the taxable year computed with the current deduction, or (2) the tax for the taxable year computed without the deduction, less the decrease in tax for the prior taxable year or years that would have occurred if the item or portion of the item had been excluded from gross income in the prior taxable year or years. Section 1341(a)(4) and (5).

To satisfy the requirements of § 1341(a)(2), a deduction must arise because the taxpayer is under an obligation to restore the income. Section 1.1341-1(a)(1)-(2); *Alcoa, Inc. v. United States*, 509 F.3d 173, 179 (3d Cir. 2007); *Kappel v. United States*, 437 F.2d 1222, 1226 (3d Cir.), *cert. denied*, 404 U.S. 830 (1971).

When A incurs a loss from criminal fraud or embezzlement by B in a transaction entered into for profit, any theft loss deduction to which A may be entitled does not arise from an obligation on A's part to restore income. Therefore, A is not entitled to the tax benefits of § 1341 with regard to A's theft loss deduction.

Issue 7. Mitigation provisions.

The mitigation provisions of §§ 1311-1314 permit the Service or a taxpayer in certain circumstances to correct an error made in a closed year by adjusting the tax liability in years that are otherwise barred by the statute of limitations. *O'Brien v. United States*, 766 F.2d 1038, 1041 (7th Cir. 1995). The party invoking these mitigation provisions has the burden of proof to show that the specific requirements are satisfied. *Id.* at 1042.

Section 1311(a) provides that if a determination (as defined in § 1313) is described in one or more of the paragraphs of § 1312 and, on the date of the determination, correction of the effect of the error referred to in § 1312 is prevented by the operation of any law or rule of law (other than §§ 1311-1314 or § 7122), then the effect of the error is corrected by an adjustment made in the amount and in the manner specified in § 1314.

Section 1311(b)(1) provides in relevant part that an adjustment may be made under §§ 1311-1314 only if, in cases when the amount of the adjustment would be credited or refunded under § 1314, the determination adopts a position maintained by the Secretary that is inconsistent with the erroneous prior tax treatment referred to in § 1312.

A cannot use the mitigation provisions of §§ 1311-1314 to adjust tax liability in Years 2 through 4 because there is no inconsistency in the Service's position with respect to A's prior inclusion of income in Years 2 through 4. *See* § 1311(b)(1). The Service's position that A is entitled to an investment theft loss under § 165 in Year 8 (as computed in Issue 4, above), when the fraud loss is discovered, is consistent with the Service's position that A properly included in income the amounts credited to A's account in Years 2 through 4. *See* § 1311(b)(1)(A).

HOLDINGS

(1) A loss from criminal fraud or embezzlement in a transaction entered into for profit is a theft loss, not a capital loss, under § 165.

(2) A theft loss in a transaction entered into for profit is deductible under § 165(c)(2), not § 165(c)(3), as an itemized deduction that is not subject to the personal loss limits in § 165(h), or the limits on itemized deductions in §§ 67 and 68.

(3) A theft loss in a transaction entered into for profit is deductible in the year the loss is discovered, provided that the loss is not covered by a claim for reimbursement or recovery with respect to which there is a reasonable prospect of recovery.

(4) The amount of a theft loss in a transaction entered into for profit is generally the amount invested in the arrangement, less amounts withdrawn, if any, reduced by reimbursements or recoveries, and reduced by claims as to which there is a reasonable prospect of recovery. Where an amount is reported to the investor as income prior to discovery of the arrangement and the investor includes that amount in gross income and reinvests this amount in the arrangement, the amount of the theft loss is increased by the purportedly reinvested amount.

(5) A theft loss in a transaction entered into for profit may create or increase a net operating loss under § 172 that can be carried back up to 3 years and forward up to 20 years. An eligible small business may elect either a 3, 4, or 5-year net operating loss carryback for an applicable 2008 net operating loss.

(6) A theft loss in a transaction entered into for profit does not qualify for the computation of tax provided by § 1341.

(7) A theft loss in a transaction entered into for profit does not qualify for the application of §§ 1311–1314 to adjust tax liability in years that are otherwise barred by the period of limitations on filing a claim for refund under § 6511.

DISCLOSURE OBLIGATION UNDER § 1.6011–4

A theft loss in a transaction entered into for profit that is deductible under § 165(c)(2) is not taken into account in determining whether a transaction is a loss transaction under § 1.6011–4(b)(5). *See*

§ 4.03(1) of Rev. Proc. 2004–66, 2004–2 C.B. 966.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 71–381 is obsolete to the extent that it holds that a theft loss incurred in a transaction entered into for profit is deductible under § 165(c)(3) rather than § 165(c)(2).

DRAFTING INFORMATION

The principal author of this revenue ruling is Andrew M. Irving of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue ruling, contact Mr. Irving at (202) 622–5020 (not a toll-free call).

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

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

The adjusted applicable federal long-term rate is set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

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

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

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for April 2009.

Rev. Rul. 2009-10

This revenue ruling provides various prescribed rates for federal income tax purposes for April 2009 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term

adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable

percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2009-10 TABLE 1				
Applicable Federal Rates (AFR) for April 2009				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.83%	.83%	.83%	.83%
110% AFR	.91%	.91%	.91%	.91%
120% AFR	1.00%	1.00%	1.00%	1.00%
130% AFR	1.08%	1.08%	1.08%	1.08%
<i>Mid-term</i>				
AFR	2.15%	2.14%	2.13%	2.13%
110% AFR	2.36%	2.35%	2.34%	2.34%
120% AFR	2.59%	2.57%	2.56%	2.56%
130% AFR	2.80%	2.78%	2.77%	2.76%
150% AFR	3.24%	3.21%	3.20%	3.19%
175% AFR	3.79%	3.75%	3.73%	3.72%
<i>Long-term</i>				
AFR	3.67%	3.64%	3.62%	3.61%
110% AFR	4.04%	4.00%	3.98%	3.97%
120% AFR	4.42%	4.37%	4.35%	4.33%
130% AFR	4.79%	4.73%	4.70%	4.68%

REV. RUL. 2009-10 TABLE 2				
Adjusted AFR for April 2009				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.87%	.87%	.87%	.87%
Mid-term adjusted AFR	2.39%	2.38%	2.37%	2.37%
Long-term adjusted AFR	4.61%	4.56%	4.53%	4.52%

REV. RUL. 2009-10 TABLE 3
Rates Under Section 382 for April 2009

Adjusted federal long-term rate for the current month	4.61%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	5.27%

REV. RUL. 2009-10 TABLE 4
Appropriate Percentages Under Section 42(b)(1) for April 2009

Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.67%
Appropriate percentage for the 30% present value low-income housing credit	3.29%

REV. RUL. 2009-10 TABLE 5
Rate Under Section 7520 for April 2009

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	2.6%
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Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. See Rev. Rul. 2009-10, page 738.

Section 6411.—Tentative Carryback and Refund Adjustments

Guidance is provided for taxpayers to elect the 3, 4, or 5-year carryback of net operating losses of

small businesses under section 1211 of the American Recovery and Reinvestment Tax Act of 2009 by filing Form 1045, Application for Tentative Refund, or Form 1139, Corporation Application for Tentative Refund. See Rev. Proc. 2009-19, page 747.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. See Rev. Rul. 2009-10, page 738.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. See Rev. Rul. 2009-10, page 738.

Part III. Administrative, Procedural, and Miscellaneous

Asset Valuation under Section 430(g)(3)(B) as amended by WRERA

Notice 2009–22

I. PURPOSE

This notice provides interim rules regarding asset valuation methods that are permitted to be used by single employer defined benefit pension plans for minimum funding purposes pursuant to changes made by the Worker, Retiree, and Employer Recovery Act of 2008, Public Law 110–458 (WRERA). This notice also provides automatic approval for a change in asset valuation method for plan years beginning during 2009 to adopt any permissible asset valuation method.

II. BACKGROUND

Section 412 of the Internal Revenue Code (the Code) provides minimum funding requirements that generally apply for defined benefit pension plans. Section 412(d)(1) provides that any change in funding method is permitted to take effect only if it is approved by the Secretary. A change in the plan's funding method includes a change in the method for determining the value of the plan's assets, a change in the method for determining the plan's liabilities, or a change in the plan's valuation date.

Section 430, which was added by the Pension Protection Act of 2006, Public Law 109–280 (PPA '06), provides rules for the determination of the minimum required contribution applicable to single employer pension plans (including multiple employer plans) pursuant to § 412. Section 430 is generally effective for plan years beginning on or after January 1, 2008.

Section 430(g)(1) provides that all determinations made under § 430 for a plan year must be made as of the plan's valuation date. Section 430(g)(2) provides that the valuation date for a plan year must be the first day of the plan year, except in the case of a plan with 100 or fewer participants (determined as provided in § 430(g)(2)(B) and (C)).

Section 430(g)(3) provides rules regarding the determination of the value of plan assets for purposes of § 430. Under § 430(g)(3)(A), except as provided in § 430(g)(3)(B), the fair market value of plan assets must be used for this purpose. As an alternative to the use of fair market value, § 430(g)(3)(B) permits the use of an actuarial value of assets based on the average of fair market values, but only if such method is permitted under regulations prescribed by the Secretary, does not provide for averaging of such values over more than the period beginning on the last day of the 25th month preceding the month in which the valuation date occurs and ending on the valuation date (or a similar period in the case of a valuation date that is not the 1st day of a month), and does not result in a determination of the actuarial value of plan assets that, at any time, is lower than 90 percent or greater than 110 percent of the fair market value of plan assets as of the valuation date.

Section 436 provides certain limitations on a defined benefit plan that are based on the funded status of the plan. For this purpose, the funding status of the plan is based on the adjusted funding target attainment percentage, which in turn is based in part on the value of plan assets as determined under § 430.

Prior to amendment by WRERA, the last sentence of § 430(g)(3)(B) provided that any averaging under § 430(g)(3)(B) must be adjusted for contributions and distributions (as provided by the Secretary). Section 121(b) of WRERA amended the last sentence of § 430(g)(3)(B) to provide that any averaging under § 430(g)(3)(B) must be adjusted for contributions, distributions, and expected earnings (as determined by the plan's actuary on the basis of an assumed earnings rate specified by the actuary, but not in excess of the third segment rate applicable under § 430(h)(2)(C)(iii)), as specified by the Secretary. This WRERA change is effective for the same periods as the PPA '06 provision that it amends.

On December 31, 2007, proposed regulations under §§ 430(d), 430(g), 430(h), and 430(i) were published in the Federal Register (REG–139236–07, 2008–9 I.R.B. 491 [72 FR 74215]) (the proposed regu-

lations). Section 1.430(g)–1(c)(2) of the proposed regulations provides rules for a permissible asset valuation method based on the average of fair market values of plan assets, in accordance with § 430(g)(3)(B), prior to amendment by WRERA. Under this asset valuation method, the actuarial value of assets is the average of the fair market value of assets on the valuation date and the adjusted fair market value of assets determined as of one or more earlier determination dates. The adjusted fair market value of assets as of a determination date is the fair market value of plan assets on that date, increased for contributions included in the plan's asset balance on the valuation date that were not included in the plan's asset balance on the determination date, and decreased for benefits and administrative expenses paid from plan assets between that determination date and the valuation date. Because the proposed regulations were issued prior to the enactment of WRERA, the proposed regulations do not provide for an adjustment for expected earnings in determining the adjusted fair market value as of an earlier determination date. Section 1.430(g)–1(f)(4) of the proposed regulations provides that any change in a plan's valuation date or asset valuation method that is made for the first plan year for which § 430 applies to the plan and that is not inconsistent with the requirements of § 430 is treated as having been approved by the Commissioner and does not require the Commissioner's specific prior approval.

The proposed regulations are proposed to be effective for plan years beginning on or after January 1, 2009. The preamble of the proposed regulations provides that plans may rely on the proposed regulations for plan years beginning during 2008. Notice 2008–21, 2008–7 I.R.B. 431, states generally that the Service will not challenge a reasonable interpretation of an applicable statutory provision under § 430 or § 436 for plan years beginning during 2008, but noted that the use of averaging methods in determining the value of plan assets under § 430(g)(3)(B) is permitted only in accordance with a method prescribed in regulations.

Part III of this notice describes the rules expected to be incorporated in future regulations for adjusting asset values for expected earnings, pursuant to § 430(g)(3)(B), as amended by WRERA, using an assumed rate of return. Taxpayers may rely on the rules described in Part III of this notice for plan years beginning during 2008 and 2009.

The rules in Part III of this notice modify the determination of the adjusted fair market value of plan assets for a prior determination date that is used in determining the average of fair market values under § 430(g)(3)(B) as provided in the proposed regulations. The other rules for the asset valuation method under § 430(g)(3)(B) set forth in the proposed regulations continue to apply. For example, the period of time between each of the determination dates (treating the valuation date as a determination date) must be equal and the method of determining the value of plan assets (including the selection of the determination dates) is part of the plan's funding method.

The guidance provided in this notice with respect to § 430(g)(3)(B) of the Code also applies for purposes of the parallel provision in section 303(g)(3)(B) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). (Under section 101 of the Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive authority over the subject matter addressed in this notice for purposes of ERISA, as well as the Code.)

III. INTERIM RULES FOR APPLICATION OF NEW ASSET VALUATION METHOD

A. Adjustment for expected earnings.

The adjustment for expected earnings that is made to the fair market value of plan assets for a determination date is the sum of the expected earnings separately determined for each period between the determination date and the valuation date. The expected earnings for a period that is 12 months in length is equal to the product of the assumed rate of return for the 12 months and the fair market value of assets as of the determination date that is the beginning of the period, adjusted to reflect any contributions, benefits, and administrative expenses paid during the pe-

riod (other than contributions for a plan year that ends with or prior to the determination date). If the period for which expected earnings is being determined is less than 12 months, then the expected earnings must be reduced to reflect the length of the shorter period. The fair market value of assets as of a determination date includes any contribution for a plan year that ends with or prior to the determination date that is receivable as of the determination date (provided that the contribution is actually made within 8½ months after the end of the applicable plan year). If the contribution that is receivable as of a determination date is for a plan year beginning on or after January 1, 2008, then only the present value as of that determination date (determined using the effective interest rate for the plan year for which the contribution is made) is included in the fair market value of assets. The adjustment to the calculation of expected earnings for a period to reflect any other contributions, and to reflect benefits and administrative expenses paid during the period must take into account the timing of those contributions, benefits, and expenses.

The assumed rate of return for a period must be the actuary's best estimate of the anticipated annual rate of return on plan assets from the valuation date until all benefits are expected to be paid, limited so that the assumed rate of return does not exceed the interest rate limitation determined under section III.B or III.C of this notice, as applicable for the plan year that contains the period. If the period between one determination date and the next includes portions of more than one plan year, then the limitation on the assumed rate of return is the lower of the applicable limitations for those plan years.

B. Determination of the limitation on the assumed rate of return for periods within plan years for which either the funding target or the target normal cost is determined using the three segment interest rates under § 430(h)(2)(C).

If either the funding target or target normal cost for a plan year is determined (either for purposes of determining minimum required contributions under § 430 or for purposes of the disclosure requirement under section 101(f) of ERISA) using the three segment interest rates described in

§ 430(h)(2)(C) (determined with or without the application of the transition rule under § 430(h)(2)(G)), then the assumed rate of return applicable for periods within the plan year must be limited so that it does not exceed the third segment interest rate used in that determination. This rule does not apply when the full yield curve is used to determine the funding target and target normal cost, but the rule does apply in most other cases with respect to periods in plan years beginning on or after January 1, 2008.

C. Determination of the limitation on the assumed rate of return for periods within plan years for which neither the funding target nor the target normal cost is determined using the three segment interest rates under § 430(h)(2)(C).

If neither the funding target nor the target normal cost for a plan year is determined using the three segment interest rates described in § 430(h)(2)(C) (determined with or without the application of the transition rule under § 430(h)(2)(G)), then the limitation on the assumed rate of return applicable for periods within the plan year cannot be determined using the rules described in section III.B of this notice. This is the case, for example, when: (1) the plan year which contains the period for which expected earnings are being determined begins before January 1, 2008; (2) the funding target and target normal cost are determined using the full yield curve described in § 430(h)(2)(D)(ii); or (3) in the case of a plan with respect to which an election has been made under section 402(a)(1) of PPA '06 (which is generally available only for the pension plan of a commercial passenger airline under which accruals are frozen), the minimum required contribution is determined under section 402(e) of PPA '06.

If the limitation on the assumed rate of return applicable for periods within the plan year cannot be determined using the rules described in section III.B of this notice, then the assumed rate of return for periods within the plan year generally must be limited so that it does not exceed the average of the third segment rates for the 24-month period ending with the month preceding the month that contains the valuation date for the plan year. However, if

the Service has not published the 24-month average of the third segment rate for the month preceding the month that contains the valuation date for the plan year (*i.e.*, the 24-month period ends before August 2007), then the spot third segment rate for the month preceding the month that contains the valuation date is used as the limitation on the assumed rate of return for the plan year.

D. Application of the 90 to 110 percent corridor.

The rules for accounting for contribution receipts under § 430(g)(4) are applied prior to the application of the 90 to 110 percent corridor under § 430(g)(3)(B)(iii). Thus, for example, in the case of a plan with a calendar plan year, a contribution receivable for the 2008 plan year which is made in 2009 will increase the upper end of the 90 to 110 percent corridor by 110% of the present value, determined as of January 1, 2009, of that contribution receivable.

E. Special rule for plan years beginning during 2008.

The actuarial value of plan assets for a plan year that begins during 2008 is

permitted to be determined using an asset averaging method that complies with the rules described in § 1.430(g)-1(f)(4) of the proposed regulations (notwithstanding that this determination results in a lower value of plan assets than under § 430(g)(3)(B) as amended by WRERA). Accordingly, no adjustment for expected earnings is required to be applied for purposes of determining the actuarial value of assets under § 430(g)(3)(B) for a plan year that begins during 2008. Thus, for a plan year that begins in 2008, no retroactive changes to the actuarial value of assets need be made to comply with the amendments to § 430(g)(3)(B) made by WRERA in the case of a plan that has complied with applicable requirements for that plan year (such as quarterly contribution requirements under § 430(j) and benefit restrictions under § 436) based on the asset averaging method permitted before the enactment of WRERA.

For a plan year that begins in 2008, a plan for which the actuarial value of plan assets for purposes of §§ 430 and 436 was determined based on the proposed regulations is permitted to have the actuarial value of plan assets redetermined pursuant to § 430(g)(3)(B), as amended by WRERA. However, plans

should take into account the risk that any such redetermination may result in plan operations for the plan year having been inconsistent with the requirements of section 206(g) of ERISA (the provision that parallels § 436 of the Code).

F. Examples.

The following examples illustrate the application of this section III:

Example 1 — Actuarial value of assets calculated as of January 1, 2009, using the average of the value on the valuation date and the two prior valuation dates

Facts

All assets of Plan A are invested in a trust fund, the plan year is the calendar year, and the valuation date is January 1. The actuarial value of assets is determined by averaging the fair market value as of the valuation date and the adjusted fair market values as of the preceding two valuation dates. Benefit payments and administrative expenses are paid evenly throughout the year, and accordingly are assumed to be made mid-year. The plan is not required to make quarterly contributions, and contributions for a plan year are made on September 15 following each plan year.

The fair market value of assets in trust and the contribution amounts are summarized below:

	2007	2008	2009
Fair market value Jan. 1:			
Assets in trust as of Jan. 1	\$135,500	\$176,000	\$162,000
Contribution for prior plan year paid Sept. 15	\$ 61,000	\$ 62,000	\$ 68,781
Effective interest rate for prior plan year	N/A	N/A	6.00%
Discounted prior plan year contribution receivable as of Jan. 1	\$ 61,000	\$ 62,000	\$ 66,000
Fair market value as of Jan. 1 including contrib. receivable	\$196,500	\$238,000	\$228,000

An actuarial valuation is performed as of January 1, 2009. The fair market value of assets, plan contri-

butions, benefit payments, and other relevant items

for January 1, 2007 through January 1, 2009 are as follows:

	2007	2008
Fair market value January 1 including contributions receivable	\$196,500	\$238,000
Contributions for current year	\$ 62,000	\$ 66,000*
Benefit payments	\$ (24,000)	\$ (25,000)
Expenses	\$ (7,000)	\$ (7,500)
Interest and dividends	\$ 7,500	\$ 7,000
Net realized gains (losses)	\$ 6,000	\$ (8,500)
Balancing item	\$ (3,000)	\$ (42,000)
Fair market value: Dec. 31	\$238,000	\$228,000

*Present value as of January 1, 2009

Computation of expected earnings

The plan sponsor elects to determine present values and other computations under § 430 using the 24-month average of segment rates for the fourth month preceding the month that contains the valuation date, without applying the transition rules in § 430(h)(2)(G). The actuary's best estimate of the anticipated rate of return on plan assets is 6.25% for 2007 and is 6.25% for 2008. However, the assumed rate of return used for determining expected earnings for each of these plan years is equal to the lesser of the anticipated rate of return on assets for the plan year and the applicable limitation for the plan year.

The January 1, 2007 valuation was performed based on the funding rules in effect prior to

PPA '06, and therefore did not use the segment rates. Accordingly, the limitation on the assumed rate of return for 2007 is determined under section III.C of this notice. Furthermore, the Service did not publish the 24-month average of the third segment rates for the 24-month period that ended with the month prior to the valuation date (December 2006). Therefore, in accordance with section III.C of this notice, the assumed rate of return applicable for periods in 2007 is limited so that it does not exceed the spot third segment rate for the month prior to the valuation date (December 2006), or 6.09% (per Table II of Notice 2007-81, 2007-2 C.B. 899). Because this rate is lower than the actuary's best estimate of the anticipated rate of return on plan assets for 2007, the assumed rate of return for 2007 is limited to 6.09%.

For 2008, the third segment rate used to limit the assumed rate of return is the rate used for the January 1, 2008 valuation. Because the plan sponsor has elected to use the segment rates for the fourth month preceding the valuation date (September 2007) without transition, the third segment rate is 6.38%. Because this rate is higher than the actuary's best estimate of the anticipated rate of return on plan assets for 2008, the assumed rate of return for 2008 is equal to 6.25% (the actuary's best estimate of the anticipated rate of return on plan assets).

Expected earnings are calculated as follows for each year:

$$2007: (\$196,500 \times .0609) + [\$62,000 \times (1.0609^0 - 1)] - [(\$24,000 + \$7,000) \times (1.0609^{(1/2)} - 1)] = \$11,037$$

$$2008: (\$238,000 \times .0625) + [\$66,000 \times (1.0625^0 - 1)] - [(\$25,000 + \$7,500) \times (1.0625^{(1/2)} - 1)] = \$13,875$$

Computation of adjusted fair market value of assets

The adjusted fair market values of assets for the January 1, 2007 and January 1, 2008 determination dates are computed as follows:

Adjusted values	2007	2008
Fair market value January 1:	\$196,500	\$238,000
Net adjustments:		
Contributions for 2007	\$ 62,000	n/a
Contributions for 2008	\$ 66,000*	\$ 66,000*
Benefit payments for 2007	\$ (24,000)	n/a
Benefit payments for 2008	\$ (25,000)	\$ (25,000)
Expenses for 2007	\$ (7,000)	n/a
Expenses for 2008	\$ (7,500)	\$ (7,500)
Expected earnings for 2007	\$ 11,037	n/a
Expected earnings for 2008	\$ 13,875	\$ 13,875
Adjusted fair market value	\$285,912	\$285,375

*Present value as of January 1, 2009

Computation of actuarial value of assets

Average of adjusted fair market value at earlier determination dates and fair market value at valuation date:

$$(\$285,912 + \$285,375 + \$228,000) \div 3 = \$266,429$$

This preliminary average as of January 1, 2009 must be limited so that it satisfies the 90-110 percent corridor rules under § 430(g)(3)(B)(iii). Because 110% of \$228,000 equals \$250,800, the actuarial value of assets for Plan A must be limited to \$250,800 (rather than \$266,429). Thus, the actuarial value of assets as of January 1, 2009 is \$250,800.

Algebraically equivalent determination of actuarial value of assets

Note that the above calculation of the preliminary average as of January 1, 2009 is algebraically equivalent to the method under Approval 15 of Rev. Proc. 2000-40, 2000-2 C.B. 357, using the assumed rate of

return for each year as described above and a smoothing period of three years. This equivalency is demonstrated as follows:

	2007	2008
Actual earnings:		
Interest and dividends	\$ 7,500	\$ 7,000
Net realized gains (losses)	\$ 6,000	\$ (8,500)
Balancing item	\$ (3,000)	\$ (42,000)
Total actual earnings	\$ 10,500	\$ (43,500)
Expected earnings	\$ 11,037	\$ 13,875
Gain (loss) equal to actual earnings minus expected earnings	\$ (537)	\$ (57,375)

Preliminary actuarial value of assets as of January 1, 2009 equals:

$$\$228,000 + \text{one-third of the 2007 loss } (1/3 \times \$537) + \text{two-thirds of the 2008 loss } (2/3 \times \$57,375) = \$266,429$$

As noted above, this preliminary actuarial value of assets must be limited so that the actuarial value of assets as of January 1, 2009 satisfies the 90–110 percent corridor rules under § 430(g)(3)(B)(iii). Because the preliminary actuarial value of assets exceeds 110% of the fair market value of plan assets as of the valuation date, the actuarial value of assets as of January 1, 2009 is \$250,800.

Example 2 — Actuarial value of assets calculated as of January 1, 2010, using the average of the value on the valuation date and four earlier quarterly determination dates

Facts

The facts are the same as in Example 1, except that the actuarial value of assets is calculated by averaging the fair market value as of the current valuation date and adjusted fair market values as of the beginning of the four preceding calendar quarters. Two contributions are made for the 2009 plan year—a contribution of \$10,000 made on May 1, 2009, and a contribution of \$60,000 made on September 15, 2010. The effective interest rate for the 2009 plan year is 6.10%. Benefits are paid on the 15th day of each month, and so benefits for the quarter are assumed to be made at the midpoint of each quarter. During

2009, administrative expenses are paid at the beginning of each quarter.

An actuarial valuation is performed as of January 1, 2010. For each determination date for which the contribution of \$68,781 paid on September 15, 2009 is a contribution receivable for the 2008 plan year, the contribution receivable is discounted to the determination date using the 2008 effective interest rate of 6.00%. The contribution of \$60,000 paid on September 15, 2010 for the 2009 plan year is reflected in the fair market value of assets as of January 1, 2010, discounted to that date using the 2009 effective interest rate of 6.1% ($\$60,000 \div 1.061^{(8.5/12)} = \$57,536$), as illustrated in the table below:

Quarter beginning	1/1/2009	4/1/2009	7/1/2009	10/1/2009	1/1/2010
Fair market value:					
Assets in trust at beginning of quarter	\$162,000	\$143,232	\$153,649	\$215,300	\$216,900
Contributions receivable for prior plan year	\$ 68,781	\$ 68,781	\$ 68,781	\$ 0	\$ 60,000
Effective interest rate for prior plan year	6.00%	6.00%	6.00%	6.00%	6.10%
Discounted prior plan year contributions receivable at beginning of quarter	\$ 66,000	\$ 66,968	\$ 67,951	\$ 0	\$ 57,536
Total fair market value at beginning of quarter, including contributions receivable	\$228,000	\$210,200	\$221,600	\$215,300	\$274,436

The fair market value of assets, plan contributions, benefit payments, and other relevant items for

the four quarters of 2009 are shown in the table below:

Quarter beginning	1/1/2009	4/1/2009	7/1/2009	10/1/2009
Total fair market value at beginning of quarter, including contributions receivable	\$228,000	\$210,200	\$221,600	\$215,300
Contributions	\$ 0	\$ 10,000	\$ 0	\$ 57,536**
Benefit payments	\$ (6,000)	\$ (6,500)	\$ (6,300)	\$ (6,400)
Expenses	\$ (2,100)	\$ (1,900)	\$ (2,300)	\$ (1,800)
Interest and dividends	\$ 2,300	\$ 1,800	\$ 2,000	\$ 2,800
Net realized gains (losses)	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000
Balancing item*	\$ (15,000)	\$ 5,000	\$ (2,700)	\$ 4,000
Fair market value at end of quarter, including contributions receivable	\$210,200	\$221,600	\$215,300	\$274,436

* Includes the change in discounted value of the contribution receivable.

** Discounted value of contribution receivable for the 2009 plan year, paid after the end of the 2009 plan year. This discounted amount is treated as if it is paid on December 31, 2009, for the purpose of calculating the fair market value and the average value of assets.

Computation of expected earnings

The plan sponsor elects to determine present values and other computations under § 430 using the 24-month segment rates for the fourth month preceding the month that contains the valuation, without applying the transition rules in § 430(h)(2)(G). The

actuary's best estimate of the anticipated rate of return on plan assets is 6.25% for 2009. This rate is compared with the third segment rate for the 2009 plan year of 6.56% (based on the rates published for September 2008); because the third segment rate is higher than the actuary's best estimate of the anti-

ipated rate of return on plan assets, the actuary's assumed rate of return is not restricted.

Expected earnings are calculated for each quarter, taking into account the timing of contributions, benefit payments, and administrative expenses during each quarter, as follows:

Quarter beginning 1/1/2009:

$$[\$228,000 \times (1.0625^{(3/12)} - 1)] - [\$6,000 \times (1.0625^{(1.5/12)} - 1)] - [\$2,100 \times (1.0625^{(3/12)} - 1)] = \$3,404$$

Quarter beginning 4/1/2009:

$$[\$210,200 \times (1.0625^{(3/12)} - 1)] + [\$10,000 \times (1.0625^{(2/12)} - 1)] - [\$6,500 \times (1.0625^{(1.5/12)} - 1)] - [\$1,900 \times (1.0625^{(3/12)} - 1)] = \$3,233$$

Quarter beginning 7/1/2009:

$$[\$221,600 \times (1.0625^{(3/12)} - 1)] - [\$6,300 \times (1.0625^{(1.5/12)} - 1)] - [\$2,300 \times (1.0625^{(3/12)} - 1)] = \$3,301$$

Quarter beginning 10/1/2009:

$$[\$215,300 \times (1.0625^{(3/12)} - 1)] + [\$57,536 \times (1.0625^0 - 1)] - [\$6,400 \times (1.0625^{(1.5/12)} - 1)] - [\$1,800 \times (1.0625^{(3/12)} - 1)] = \$3,212$$

Computation of average value of assets

The average value of assets as of January 1, 2010, is computed as follows:

Determination date	1/1/2009	4/1/2009	7/1/2009	10/1/2009
Total fair market value at beginning of quarter, including contributions receivable	\$228,000	\$210,200	\$221,600	\$215,300
Net adjustments*				
Contributions	\$ 67,536	\$ 67,536	\$ 57,536	\$ 57,536*
Benefit payments	\$ (25,200)	\$ (19,200)	\$ (12,700)	\$ (6,400)
Expenses	\$ (8,100)	\$ (6,000)	\$ (4,100)	\$ (1,800)
Expected earnings:				
1/1/2009 - 3/31/2009	\$ 3,404	N/A	N/A	N/A
4/1/2009 - 6/30/2009	\$ 3,233	\$ 3,233	N/A	N/A
7/1/2009 - 9/30/2009	\$ 3,301	\$ 3,301	\$ 3,301	N/A
10/2009 - 12/31/2009	\$ 3,212	\$ 3,212	\$ 3,212	\$ 3,212
Adjusted fair market value	\$275,386	\$262,282	\$268,849	\$267,848

* Entries reflect the sum of the amounts for the current and later quarters, as illustrated for expected earnings.

Average of adjusted fair market value of assets at earlier determination dates and fair market value at valuation date:

$$(\$275,386 + \$262,282 + \$268,849 + \$267,848 + \$274,436) \div 5 = \$269,760$$

This average must be limited so that the actuarial value of assets as of January 1, 2010 satisfies the 90–110 percent corridor rules under § 430(g)(3)(B)(iii). Because the average of adjusted fair market values of \$269,760 falls between 90% and 110% of \$274,436, the actuarial value of assets as of January 1, 2010 is \$269,760.

IV. AUTOMATIC APPROVAL FOR CHANGE IN ASSET VALUATION METHOD

This notice provides approval by the Commissioner for a change in a plan's asset valuation method to adopt an asset valuation method that is permitted under § 430(g)(3), as amended by WRERA, that is made for a plan year that begins during 2009. In addition, the approval that would apply under the proposed regulations for a

change in funding method for a plan year that begins during 2008 will apply to a change in a plan's asset valuation method made to adopt the asset valuation method permitted by § 430(g)(3)(B), as amended by WRERA, that is made for such a plan year.

V. DRAFTING INFORMATION

The principal authors of this notice are Carolyn Zimmerman of the Employee

Plans, Tax Exempt and Government Entities Division, and Michael P. Brewer and Linda S. F. Marshall of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, please contact the Employee Plans taxpayer assistance answering service at 1-877-829-5500 (a toll-free number), Mr. Brewer or Ms. Marshall at (202) 622-6090 (not a toll-free number), or e-mail Ms. Zimmerman, at RetirementPlanQuestions@irs.gov.

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also Part I, §§ 172, 6411.)

Rev. Proc. 2009-19

SECTION 1. PURPOSE

.01 This revenue procedure provides guidance under § 1211 of the American Recovery and Reinvestment Tax Act of 2009, Div. B of Pub. L. No. 111-5, 123 Stat. 115 (February 17, 2009) (the Act). Section 1211 of the Act amends § 172(b)(1)(H) of the Internal Revenue Code to allow any taxpayer that is an eligible small business (ESB) to elect a 3, 4, or 5-year net operating loss (NOL) carryback for a taxable year ending after 2007.

.02 Specifically, this revenue procedure provides guidance to taxpayers as to the time and manner for making an election under § 172(b)(1)(H), including the election of a 3, 4, or 5-year carryback period and an election to apply § 172(b)(1)(H) to an NOL for a taxable year beginning in 2008, instead of an NOL for a taxable year ending in 2008. This revenue procedure provides guidance on when and how to elect § 172(b)(1)(H) if the taxpayer previously filed an election under § 172(b)(3) to forgo the NOL carryback period.

.03 This revenue procedure also provides guidance on how a taxpayer makes the election if the taxpayer is a partner of an ESB that is a partnership, a shareholder of an ESB that is an S corporation, or a sole proprietor.

SECTION 2. BACKGROUND

.01 Section 172(a) allows a deduction equal to the aggregate of the NOL carry-

overs and carrybacks to the taxable year. Section 172(b)(1)(A)(i) provides that an NOL for any taxable year generally must be carried back to each of the 2 years preceding the taxable year of the NOL. Section 172(b)(3) provides that any taxpayer entitled to a carryback period under § 172(b)(1) may make an irrevocable election to relinquish the carryback period with respect to an NOL for any taxable year.

.02 Section 6411(a) provides that a taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by an NOL carryback from any taxable year. Section 6411(a) also provides that the application must be filed on or after the date of filing for the return for the taxable year of the NOL from which the carryback results and within a period of 12 months after that taxable year or, with respect to any portion of a business credit carryback attributable to an NOL from a subsequent taxable year, within a period of 12 months from the end of the subsequent taxable year. Section 6411(b) provides a 90-day period during which the Internal Revenue Service will make a limited examination of the application to discover omissions and errors of computation and determine the amount of the decrease in tax attributable to the carryback. The Service may disallow, without further action, any application that contains errors of computation that cannot be corrected within the 90-day period or that contains material omissions. The decrease in tax attributable to the carryback will be applied against unpaid amounts of tax. Any remainder of the decrease will, within the 90-day period, be credited or refunded.

.03 Section 172(b)(1)(H) permits an ESB to carry back its applicable 2008 NOL to 3, 4, or 5 years preceding the taxable year of the NOL, as the ESB elects.

.04 Section 172(b)(1)(H)(iv) provides that the term “eligible small business” has the meaning given by § 172(b)(1)(F)(iii), except that § 448(c) is applied by substituting “\$15 million” for “\$5 million” each place it appears. Section 172(b)(1)(F)(iii) provides that a small business is a corporation or partnership that meets the gross receipts test of § 448(c) for the taxable year in which the loss arose (or in the case of a sole proprietorship, that would meet such test if the proprietorship were a corporation).

.05 Section 448 generally prohibits certain taxpayers from using the cash receipts and disbursements method of accounting. Section 448(b)(3) provides an exception to this requirement in the case of any corporation or partnership if, for all prior taxable years beginning after December 31, 1985, the entity (or any predecessor) met the \$5 million gross receipts test of § 448(c). Section 448(c)(1) provides that a corporation or partnership meets the \$5 million gross receipts test for any prior taxable year if the average annual gross receipts of the entity for the 3-taxable-year period ending with that prior taxable year does not exceed \$5 million. Section 448(c)(2) (aggregation rules) generally provides that all persons treated as a single employer under subsection (a) or (b) of § 52 or subsection (m) or (o) of § 414 are treated as one person for purposes of § 448(c)(1).

.06 The \$5 million gross receipts test of § 448(c) is applied to a taxpayer’s prior taxable year by determining the average annual gross receipts for the 3-year period that ends with that prior taxable year. Under § 172(b)(1)(F)(iii), in order to be a small business, a taxpayer must meet the gross receipts test of § 448(c) for the taxable year in which the NOL arose. Consequently, to determine if a taxpayer is a small business for purposes of § 172(b)(1)(F)(iii), the taxable year in which the NOL arose is the last taxable year of the 3-year period to which the test is applied.

.07 Section 172(b)(1)(H)(ii)(I) provides that the term “applicable 2008 net operating loss” means the taxpayer’s NOL for any taxable year ending in 2008. However, under § 172(b)(1)(H)(ii)(II), the taxpayer may elect instead to have the term mean the taxpayer’s NOL for any taxable year beginning in 2008.

.08 Section 172(b)(1)(H)(iii) provides that any election under § 172(b)(1)(H) is required to be made in such a manner as may be prescribed by the Secretary, and must be made by the due date (including extension of time) for filing the taxpayer’s return for the taxable year of the NOL. The election is irrevocable and may be made only for one taxable year.

.09 Section 1211(d)(2) of the Act provides that in the case of an applicable 2008 NOL for a taxable year ending before the date of enactment of the Act (February 17, 2009), (A) a previous election made un-

der § 172(b)(3) for the NOL may be revoked on or before April 17, 2009; (B) the § 172(b)(1)(H) election for the NOL is treated as timely if made on or before April 17, 2009; and (C) an application under § 6411(a) with respect to the NOL is treated as timely if filed on or before April 17, 2009.

SECTION 3. SCOPE

This revenue procedure applies to any taxpayer that is an ESB, a partner of a partnership that is an ESB, a shareholder in an S corporation that is an ESB, or a sole proprietor of a business that is an ESB, and that incurred an NOL for any taxable year ending in 2008 or beginning in 2008.

SECTION 4. APPLICATION

.01 Eligible small businesses that have not filed a return for the applicable 2008 NOL taxable year.

(1) A taxpayer within the scope of this revenue procedure that has not filed a return for the taxable year in which the applicable 2008 NOL arises makes the election under § 172(b)(1)(H) by attaching a statement to the taxpayer's federal income tax return for the taxable year in which the applicable 2008 NOL arises. The statement must—

(a) Clearly state that the taxpayer is electing to apply § 172(b)(1)(H);

(b) Describe the length of the NOL carryback period elected by the taxpayer (3, 4, or 5 years); and

(c) If applicable, state that the taxpayer is electing to apply § 172(b)(1)(H) to the taxpayer's taxable year that begins in 2008.

(2) The taxpayer's return must be filed by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the applicable 2008 NOL. In the case of a late election, relief may be available under § 301.9100-2(b) of the Procedure and Administration Regulations. Notwithstanding this due date, an election to apply § 172(b)(1)(H) to an applicable 2008 NOL for a taxable year ending before February 17, 2009, will be treated as timely if the election is filed on or before April 17, 2009.

.02 Eligible small businesses that have filed a return for the applicable 2008 NOL

taxable year and did not elect to forgo the NOL carryback period.

(1) A taxpayer within the scope of this revenue procedure that previously filed a return for the applicable 2008 NOL taxable year and did not elect to forgo the NOL carryback period under § 172(b)(3) makes the election under § 172(b)(1)(H) as follows:

(a) *What to file.*

(i) The taxpayer must file the appropriate form including a statement of the carryback period the taxpayer elects (3, 4, or 5 years). The appropriate form is—

(A) For corporations, Form 1139, *Corporation Application for Tentative Refund*, or Form 1120X, *Amended U.S. Corporation Income Tax Return*;

(B) For individuals, Form 1045, *Application for Tentative Refund*, or Form 1040X, *Amended U.S. Individual Income Tax Return*; and

(C) For estates or trusts, Form 1045, or amended Form 1041, *U.S. Income Tax Return for Estates and Trusts*.

(ii) A taxpayer that makes the election by filing an amended return must file the return for the earliest taxable year to which the taxpayer is carrying back the applicable 2008 NOL. The taxpayer should not file an amended return for the applicable 2008 NOL taxable year.

(b) *Labels.* The taxpayer should type or print across the top of the appropriate form "2008 NOL Carryback Election Pursuant to Rev. Proc. 2009-19." If the taxpayer previously filed an application for a tentative carryback adjustment or an amended return applying an NOL carryback period that did not qualify for the election under § 172(b)(1)(H), the taxpayer also should type or print across the top of the appropriate form "Amended NOL Carryback Election Pursuant to Rev. Proc. 2009-19." In addition to the labels listed above, a taxpayer that elects pursuant to § 172(b)(1)(H)(ii)(II) to treat its NOL arising in a taxable year beginning in 2008 as the applicable 2008 NOL, must include a statement that the taxpayer is electing to apply § 172(b)(1)(H) to a taxable year that begins in 2008.

(c) *When to file.* The taxpayer must file the appropriate form by the later of the date that is 6 months after the due date (excluding extensions) for filing the taxpayer's return for the taxable year of the applicable 2008 NOL, or on or before April 17, 2009.

(2) If a taxpayer makes the election under § 172(b)(1)(H) by filing an applicable form that amends a prior refund claim, the amendment also will apply to a carryback of any alternative tax NOL for the same taxable year. In the case of an amended application for a tentative carryback adjustment, the 90-day period described in § 6411(b) will begin on the date the amended application is filed.

.03 Eligible small businesses that elected to forgo the NOL carryback period under § 172(b)(3). A taxpayer within the scope of this revenue procedure that previously elected under § 172(b)(3) to forgo the carryback period for an applicable 2008 NOL for a taxable year ending before February 17, 2009, may revoke that election and make the election under § 172(b)(1)(H). Any revocation of the election to forgo the NOL carryback period also will apply to a carryback of any alternative tax NOL for the same taxable year. The taxpayer makes the revocation and election by following the procedures of section 4.02 of this revenue procedure. However, instead of the label required in section 4.02(1)(b) of this revenue procedure, the taxpayer should type or print across the top of the appropriate form "2008 NOL Carryback Election and Revocation of NOL Carryback Waiver Pursuant to Rev. Proc. 2009-19." The taxpayer must file the revocation and new election under § 172(b)(1)(H) on or before April 17, 2009.

.04 Partnerships, S corporations, and sole proprietorships.

(1) If the taxpayer is a partner in a partnership that qualifies as an ESB, the taxpayer may make the § 172(b)(1)(H) election for its distributive share of the qualifying ESB partnership income, gain, loss, and deduction that is both allocable to the taxpayer under § 704 and allowed in calculating the taxpayer's applicable 2008 NOL.

(2) If the taxpayer is a shareholder in an S corporation that qualifies as an ESB, the taxpayer may make the § 172(b)(1)(H) election for its *pro rata* share of the qualifying ESB S corporation income, gain, loss, and deduction under § 1366 that is allowed in calculating the shareholder's applicable 2008 NOL.

(3) If the taxpayer is an owner of a sole proprietorship that qualifies as an ESB, the taxpayer may make the § 172(b)(1)(H)

election for the qualifying ESB sole proprietorship income, gain, loss, and deduction that is allowed in calculating the taxpayer's applicable 2008 NOL.

(4) In determining whether a partnership, S corporation, or sole proprietorship qualifies as an ESB, the gross receipts test applies at the partnership, corporate, or sole proprietorship level. The aggregation rules of § 448(c)(2) apply to determine whether the partnership, S corporation, or sole proprietorship meets the gross receipts test of § 448(c).

(5) The amount of the taxpayer's applicable 2008 NOL that the taxpayer may carry back under § 172(b)(1)(H) is limited to the lesser of:

(a) The taxpayer's items of income, gain, loss or deduction that are allowed in calculating the taxpayer's applicable 2008 NOL and are from one or more partnerships, S corporations or sole proprietorships that qualify as ESBs, or

(b) The taxpayer's applicable 2008 NOL.

(6) *Examples.*

(a) *Example 1.* Partnerships A, B, and C have average annual gross receipts of \$10 million, \$12 million, and \$14 million, respectively. Partner T owns a 40% interest in each partnership. None of the partnerships is required to be aggregated with any other entity for purposes of the aggregation rules of § 448(c)(2). Subject to the limitations in section 4.04(5) of this revenue procedure, Partner T may apply its election under § 172(b)(1)(H) to the portion of its applicable 2008 NOL attributable to its distributive share of the income, gain, loss, and deduction of each of Partnerships A, B, and C.

(b) *Example 2.* The facts are the same as in *Example 1*, except that Partnerships A and B are under common control within the meaning of § 52(b)(1). Accordingly, Partnerships A and B are treated as one person under the aggregation rules of § 448(c)(2). Because the aggregated average annual gross receipts of Partnerships A and B exceed \$15 million, Partnerships A and B do not qualify as ESBs. Partner T may not apply its election under § 172(b)(1)(H) to the portion of its applicable 2008 NOL attributable to its distributive share of the income, gain, loss, and deduction of Partnerships A and B. However, subject to the limitations in section 4.04(5) of this revenue procedure, Partner T may apply its election under § 172(b)(1)(H) to the portion of its applicable 2008 NOL attributable to its distributive share of income, gain, loss, and deduction of Partnership C.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for NOLs arising in taxable years ending after December 31, 2007.

SECTION 6. 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 the following control numbers: 1545-0074 Form 1040 (*U.S. Individual Income Tax Return*) and Form 1040X (*Amended U.S. Individual Income Tax Return*); 1545-0123 Form 1120 (*U.S. Corporation Income Tax Return*); 1545-0132 Form 1120X (*Amended U.S. Corporation Income Tax Return*); 1545-0092 Form 1041 (*U.S. Income Tax Return for Estates and Trusts*); 1545-0098 Form 1045 (*Application for Tentative Refund*); 1545-0582 Form 1139 (*Corporation Application for Tentative Refund*). For further information, please refer to the Paperwork Reduction Act statements accompanying these forms.

DRAFTING INFORMATION

The principal author of this revenue procedure is Seoyeon Park of the Office of the Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Park at (202) 622-4960 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also Part I, §§ 165; 1.165-8(c).)

Rev. Proc. 2009-20

SECTION 1. PURPOSE

This revenue procedure provides an optional safe harbor treatment for taxpayers that experienced losses in certain investment arrangements discovered to be criminally fraudulent. This revenue procedure also describes how the Internal Revenue Service will treat a return that claims a deduction for such a loss and does not use the safe harbor treatment described in this revenue procedure.

SECTION 2. BACKGROUND

.01 The Service and Treasury Department are aware of investment arrange-

ments that have been discovered to be fraudulent, resulting in significant losses to taxpayers. These arrangements often take the form of so-called "Ponzi" schemes, in which the party perpetrating the fraud receives cash or property from investors, purports to earn income for the investors, and reports to the investors income amounts that are wholly or partially fictitious. Payments, if any, of purported income or principal to investors are made from cash or property that other investors invested in the fraudulent arrangement. The party perpetrating the fraud criminally appropriates some or all of the investors' cash or property.

.02 Rev. Rul. 2009-9, 2009-14 I.R.B. 735 (April 6, 2009), describes the proper income tax treatment for losses resulting from these Ponzi schemes.

.03 The Service and Treasury Department recognize that whether and when investors meet the requirements for claiming a theft loss for an investment in a Ponzi scheme are highly factual determinations that often cannot be made by taxpayers with certainty in the year the loss is discovered.

.04 In view of the number of investment arrangements recently discovered to be fraudulent and the extent of the potential losses, this revenue procedure provides an optional safe harbor under which qualified investors (as defined in § 4.03 of this revenue procedure) may treat a loss as a theft loss deduction when certain conditions are met. This treatment provides qualified investors with a uniform manner for determining their theft losses. In addition, this treatment avoids potentially difficult problems of proof in determining how much income reported in prior years was fictitious or a return of capital, and alleviates compliance and administrative burdens on both taxpayers and the Service.

SECTION 3. SCOPE

The safe harbor procedures of this revenue procedure apply to taxpayers that are qualified investors within the meaning of section 4.03 of this revenue procedure.

SECTION 4. DEFINITIONS

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

.01 Specified fraudulent arrangement. A specified fraudulent arrangement is an arrangement in which a party (the lead figure) receives cash or property from investors; purports to earn income for the investors; reports income amounts to the investors that are partially or wholly fictitious; makes payments, if any, of purported income or principal to some investors from amounts that other investors invested in the fraudulent arrangement; and appropriates some or all of the investors' cash or property. For example, the fraudulent investment arrangement described in Rev. Rul. 2009-9 is a specified fraudulent arrangement.

.02 Qualified loss. A qualified loss is a loss resulting from a specified fraudulent arrangement in which, as a result of the conduct that caused the loss—

(1) The lead figure (or one of the lead figures, if more than one) was charged by indictment or information (not withdrawn or dismissed) under state or federal law with the commission of fraud, embezzlement or a similar crime that, if proven, would meet the definition of theft for purposes of § 165 of the Internal Revenue Code and § 1.165-8(d) of the Income Tax Regulations, under the law of the jurisdiction in which the theft occurred; or

(2) The lead figure was the subject of a state or federal criminal complaint (not withdrawn or dismissed) alleging the commission of a crime described in section 4.02(1) of this revenue procedure, and either—

(a) The complaint alleged an admission by the lead figure, or the execution of an affidavit by that person admitting the crime; or

(b) A receiver or trustee was appointed with respect to the arrangement or assets of the arrangement were frozen.

.03 Qualified investor. A qualified investor means a United States person, as defined in § 7701(a)(30) —

(1) That generally qualifies to deduct theft losses under § 165 and § 1.165-8;

(2) That did not have actual knowledge of the fraudulent nature of the investment arrangement prior to it becoming known to the general public;

(3) With respect to which the specified fraudulent arrangement is not a tax shelter, as defined in § 6662(d)(2)(C)(ii); and

(4) That transferred cash or property to a specified fraudulent arrangement. A

qualified investor does not include a person that invested solely in a fund or other entity (separate from the investor for federal income tax purposes) that invested in the specified fraudulent arrangement. However, the fund or entity itself may be a qualified investor within the scope of this revenue procedure.

.04 Discovery year. A qualified investor's discovery year is the taxable year of the investor in which the indictment, information, or complaint described in section 4.02 of this revenue procedure is filed.

.05 Responsible group. Responsible group means, for any specified fraudulent arrangement, one or more of the following:

(1) The individual or individuals (including the lead figure) who conducted the specified fraudulent arrangement;

(2) Any investment vehicle or other entity that conducted the specified fraudulent arrangement, and employees, officers, or directors of that entity or entities;

(3) A liquidation, receivership, bankruptcy or similar estate established with respect to individuals or entities who conducted the specified fraudulent arrangement, in order to recover assets for the benefit of investors and creditors; or

(4) Parties that are subject to claims brought by a trustee, receiver, or other fiduciary on behalf of the liquidation, receivership, bankruptcy or similar estate described in section 4.05(3) of this revenue procedure.

.06 Qualified investment.

(1) Qualified investment means the excess, if any, of —

(a) The sum of —

(i) The total amount of cash, or the basis of property, that the qualified investor invested in the arrangement in all years; plus

(ii) The total amount of net income with respect to the specified fraudulent arrangement that, consistent with information received from the specified fraudulent arrangement, the qualified investor included in income for federal tax purposes for all taxable years prior to the discovery year, including taxable years for which a refund is barred by the statute of limitations; over

(b) The total amount of cash or property that the qualified investor withdrew in all years from the specified fraudulent arrangement (whether designated as income or principal).

(2) Qualified investment does not include any of the following—

(a) Amounts borrowed from the responsible group and invested in the specified fraudulent arrangement, to the extent the borrowed amounts were not repaid at the time the theft was discovered;

(b) Amounts such as fees that were paid to the responsible group and deducted for federal income tax purposes;

(c) Amounts reported to the qualified investor as taxable income that were not included in gross income on the investor's federal income tax returns; or

(d) Cash or property that the qualified investor invested in a fund or other entity (separate from the qualified investor for federal income tax purposes) that invested in a specified fraudulent arrangement.

.07 Actual recovery. Actual recovery means any amount a qualified investor actually receives in the discovery year from any source as reimbursement or recovery for the qualified loss.

.08 Potential insurance/SIPC recovery. Potential insurance/SIPC recovery means the sum of the amounts of all actual or potential claims for reimbursement for a qualified loss that, as of the last day of the discovery year, are attributable to—

(1) Insurance policies in the name of the qualified investor;

(2) Contractual arrangements other than insurance that guaranteed or otherwise protected against loss of the qualified investment; or

(3) Amounts payable from the Securities Investor Protection Corporation (SIPC), as advances for customer claims under 15 U.S.C. § 78fff-3(a) (the Securities Investor Protection Act of 1970), or by a similar entity under a similar provision.

.09 Potential direct recovery. Potential direct recovery means the amount of all actual or potential claims for recovery for a qualified loss, as of the last day of the discovery year, against the responsible group.

.10 Potential third-party recovery. Potential third-party recovery means the amount of all actual or potential claims for recovery for a qualified loss, as of the last day of the discovery year, that are not described in section 4.08 or 4.09 of this revenue procedure.

SECTION 5. APPLICATION

.01 In general. If a qualified investor follows the procedures described in section 6 of this revenue procedure, the Ser-

vice will not challenge the following treatment by the qualified investor of a qualified loss—

(1) The loss is deducted as a theft loss;

(2) The taxable year in which the theft was discovered within the meaning of § 165(e) is the discovery year described in section 4.04 of this revenue procedure; and

(3) The amount of the deduction is the amount specified in section 5.02 of this revenue procedure.

.02 *Amount to be deducted.* The amount specified in this section 5.02 is calculated as follows—

(1) Multiply the amount of the qualified investment by—

(a) 95 percent, for a qualified investor that does not pursue any potential third-party recovery; or

(b) 75 percent, for a qualified investor that is pursuing or intends to pursue any potential third-party recovery; and

(2) Subtract from this product the sum of any actual recovery and any potential insurance/SIPC recovery.

The amount of the deduction calculated under this section 5.02 is not further reduced by potential direct recovery or potential third-party recovery.

.03 *Future recoveries.* The qualified investor may have income or an additional deduction in a year subsequent to the discovery year depending on the actual amount of the loss that is eventually recovered. See § 1.165-1(d); Rev. Rul. 2009-9.

SECTION 6. PROCEDURE

.01 A qualified investor that uses the safe harbor treatment described in section 5 of this revenue procedure must—

(1) Mark “Revenue Procedure 2009-20” at the top of the Form 4684, *Casualties and Thefts*, for the federal income tax return for the discovery year. The taxpayer must enter the “deductible theft loss” amount from line 10 in Part II of Appendix A of this revenue procedure on line 34, section B, Part I, of the Form 4684 and should not complete the remainder of section B, Part I, of the Form 4684;

(2) Complete and sign the statement provided in Appendix A of this revenue procedure; and

(3) Attach the executed statement provided in Appendix A of this revenue proce-

dure to the qualified investor’s timely filed (including extensions) federal income tax return for the discovery year. Notwithstanding the preceding sentence, if, before April 17, 2009, the taxpayer has filed a return for the discovery year or an amended return for a prior year that is inconsistent with the safe harbor treatment provided by this revenue procedure, the taxpayer must indicate this fact on the executed statement and must attach the statement to the return (or amended return) for the discovery year that is consistent with the safe harbor treatment provided by this revenue procedure and that is filed on or before May 15, 2009.

.02 By executing the statement provided in Appendix A of this revenue procedure, the taxpayer agrees—

(1) Not to deduct in the discovery year any amount of the theft loss in excess of the deduction permitted by section 5 of this revenue procedure;

(2) Not to file returns or amended returns to exclude or recharacterize income reported with respect to the investment arrangement in taxable years preceding the discovery year;

(3) Not to apply the alternative computation in § 1341 with respect to the theft loss deduction allowed by this revenue procedure; and

(4) Not to apply the doctrine of equitable recoupment or the mitigation provisions in §§ 1311-1314 with respect to income from the investment arrangement that was reported in taxable years that are otherwise barred by the period of limitations on filing a claim for refund under § 6511.

SECTION 7. EFFECTIVE DATE

This revenue procedure applies to losses for which the discovery year is a taxable year beginning after December 31, 2007.

SECTION 8. TAXPAYERS THAT DO NOT USE THE SAFE HARBOR TREATMENT PROVIDED BY THIS REVENUE PROCEDURE

.01 A taxpayer that chooses not to apply the safe harbor treatment provided by this revenue procedure to a claimed theft loss is subject to all of the generally applicable provisions governing the deductibility of losses under § 165. For example, a tax-

payer seeking a theft loss deduction must establish that the loss was from theft and that the theft was discovered in the year the taxpayer claims the deduction. The taxpayer must also establish, through sufficient documentation, the amount of the claimed loss and must establish that no claim for reimbursement of any portion of the loss exists with respect to which there is a reasonable prospect of recovery in the taxable year in which the taxpayer claims the loss.

.02 A taxpayer that chooses not to apply the safe harbor treatment of this revenue procedure to a claimed theft loss and that files or amends federal income tax returns for years prior to the discovery year to exclude amounts reported as income to the taxpayer from the investment arrangement must establish that the amounts sought to be excluded in fact were not income that was actually or constructively received by the taxpayer (or accrued by the taxpayer, in the case of a taxpayer using an accrual method of accounting). However, provided a taxpayer can establish the amount of net income from the investment arrangement that was reported and included in the taxpayer’s gross income consistent with information received from the specified fraudulent arrangement in taxable years for which the period of limitation on filing a claim for refund under § 6511 has expired, the Service will not challenge the taxpayer’s inclusion of that amount in basis for determining the amount of any allowable theft loss, whether or not the income was genuine.

.03 Returns claiming theft loss deductions from fraudulent investment arrangements are subject to examination by the Service.

SECTION 9. 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 the following control numbers: 1545-0074 Form 1040 (*Individual Income Tax Return*) and Form 1040X (*Amended U.S. Individual Income Tax Return*); 1545-0123 Form 1120 (*U.S. Corporation Income Tax Return*); 1545-0132 Form 1120X (*Amended*

U.S. Corporation Income Tax Return); 1545-0092 Form 1041 (*U.S. Income Tax Return for Estates and Trusts*); 1545-0099 Form 1065 (*U.S. Return of Partnership Income*); 1545-0130 Form 1120S (*U.S. Income Tax Return for an S Corporation*). Please refer to the Paperwork Reduction

Act statements accompanying these forms for further information.

DRAFTING INFORMATION

The principal author of this revenue procedure is Norma Rotunno of the Office

of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Ms. Rotunno at (202) 622-7900.

APPENDIX A

Statement by Taxpayer Using the Procedures in Rev. Proc. 2009–20 to Determine a Theft Loss Deduction Related to a Fraudulent Investment Arrangement

Part I. *Identification*

1. Name of Taxpayer _____
2. Taxpayer Identification Number _____

Part II. *Computation of deduction*

(See Rev. Proc. 2009–20 for the definitions of the terms used in this worksheet.)

Line	Computation of Deductible Theft Loss Pursuant to Rev. Proc. 2009–20		
1	Initial investment		
2	Plus: Subsequent investments		
3	Plus: Income reported in prior years		
4	Less: Withdrawals	()	
5	Total qualified investment (combine lines 1 through 4)		
6	Percentage of qualified investment (95% of line 5 for investors with no potential third-party recovery; 75% of line 5 for investors with potential third-party recovery)		
7	Actual recovery		
8	Potential insurance/SIPC recovery		
9	Total recoveries (add lines 7 and 8)		()
10	Deductible theft loss (line 6 minus line 9)		

Part III. *Required statements and declarations*

1. I am claiming a theft loss deduction pursuant to Rev. Proc. 2009–20 from a specified fraudulent arrangement conducted by the following individual or entity (provide the name, address, and taxpayer identification number (if known)).

2. I have written documentation to support the amounts reported in Part II of this document.

3. I am a qualified investor as defined in § 4.03 of Rev. Proc. 2009–20.

4. If I have determined the amount of my theft loss deduction under § 5.02(1)(a) of Rev. Proc. 2009–20, I declare that I have not pursued and do not intend to pursue any potential third-party recovery, as that term is defined in § 4.10 of Rev. Proc. 2009–20.

5. If I have already filed a return or amended return that does not satisfy the conditions in § 6.02 of Rev. Proc 2009–20, I agree to all adjustments or actions that are necessary to comply with those conditions. The tax year or years for which I filed the return(s) or amended return(s) and the date(s) on which they were filed are as follows:

Part IV. *Signature*

I make the following agreements and declarations:

1. I agree to comply with the conditions and agreements set forth in Rev. Proc. 2009–20 and this document.
2. Under penalties of perjury, I declare that the information provided in Parts I-III of this document is, to the best of my knowledge and belief, true, correct and complete.

Your signature here _____ Date signed: _____

Your spouse's signature here _____ Date signed: _____

Corporate Name _____

Corporate Officer's signature _____

Title _____

Date signed _____

Entity Name _____

S-corporation, Partnership, Limited Liability Company, Trust

Entity Officer's signature _____

Date signed _____

Signature of executor _____

Date signed _____

Part IV. Items of General Interest

Request for Public Comments Regarding Exempt Organizations Division Web Site

Announcement 2009–25

Purpose

This Announcement invites public comments on how to improve the Internal Revenue Service's Exempt Organizations Division Web site (www.irs.gov/eo).

Background

The Customer Education and Outreach (CE&O) function of the Exempt Organizations Division (EO), Internal Revenue Service (IRS), is responsible for managing the EO Web site (www.irs.gov/eo). CE&O has found that, as the site has grown, displaying information in a logical and easy-to-use format has become challenging.

In an effort to improve the Web site, the IRS is seeking comments from the public in two specific areas:

- Reorganizing existing information to make it easier to find.
- Adding content that serve the needs of tax-exempt organizations.

The public should consider the following questions when making comments:

- How do you access the irs.gov web site?
 - Type in irs.gov as the URL
 - Via a search engine (Google, Yahoo, etc.)
 - Through a bookmark, favorites, or history view to reach a specific page
 - Do you have another preferred site entry page? If so, what is it?
- How do you find material on the site?
 - Do you use the irs.gov search engine?
 - Do you go directly to the Charities and Non-Profits page to browse?
 - Do you use the **Frequently Asked Questions for Exempt Organizations**?
 - Do you use any of our **Life Cycle** pages?

- Do you use the **More Topics** page?
- Do you use the **Charities & Non-Profits Topics** listed on the navigation bar at the left side of the page? If not, are there other topics that should be substituted?
- What types of audience or role would be the most helpful to you for organizing information?
 - Level of sophistication (*i.e.*, new organizations and established organizations)
 - Practitioners
 - Managers and executives
 - Types of tax-exempt organizations
- What do you come to the irs.gov website to do?
 - Find general information on staying tax-exempt
 - Find a specific publication or brochure
 - Find step-by-step filing instructions
- What topics or type of content should be available to suit your needs?
- Do you subscribe to the *EO Update* electronic newsletter? If not, why? If so:
 - How did you learn about it?
 - How can we expand our readership?
 - What other content should be included?

Request for Comments

Members of the public may submit comments by electronic message, by mail, or by hand delivery. All comments should refer to Announcement 2009–25, and may be mailed to:

Internal Revenue Service
Attn: Amelia Henchey
CE&O, T:EO:CEO (3B6)
1111 Constitution Avenue, N.W.
Washington, DC 20224

Hand-delivered items may be delivered Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. to:

Courier's Desk
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224
Attn: Amelia Henchey
CE&O, T:EO:CEO (3B6)

Comments may be submitted electronically to:

EO.Web.Comments@irs.gov. Please include Announcement 2009–25 in the subject line of any electronic communications.

All comments will be available for public inspection and copying in their entirety. Consideration will be given to any written public comments that are received by May 25, 2009. EO regrets that it will be unable to respond individually to comments or drafts.

Drafting Information

The principal author of this announcement is Amelia Henchey of Exempt Organizations. For further information regarding this announcement, contact Amelia Henchey at 202–283–8856 (not a toll-free call).

Request for Public Comments on New Academic Institution Initiative

Announcement 2009–26

The Customer Education and Outreach (CE&O) function of the Exempt Organizations division of the Internal Revenue Service (IRS) was established in 2000 to develop the strategic direction of the nationwide education and outreach programs for exempt organizations. Specifically, this office develops and delivers programs and products designed to assist exempt organizations to better understand their tax responsibilities that are required by the Internal Revenue Code.

Many academic institutions offer degree programs that develop, cultivate, and promote professionals who shape the exempt organization sector. The student populations of these academic institutions may one day be the leaders and managers of the exempt organizations that makeup the non-profit sector. Hence, CE&O believes that

the students of these academic institutions are an important audience to reach with education and outreach programs.

Therefore, CE&O is in the process of developing a new academic program initiative that will reach out directly to academic institutions that offer degrees related to the non-profit sector. Through the use of our existing tools and the possible development of additional resources, CE&O proposes to collaborate with these institutions to promote the education of exempt organization tax law.

The IRS invites comments and suggestions for the implementation and content of the proposed initiative. First, the IRS is requesting general responses to this initiative. Second, the IRS is seeking individuals and/or institution volunteers willing to provide more extensive input into and feedback on the proposed initiative. While the IRS might not be able to accommodate all volunteers, it will take steps to ensure that a diverse range of viewpoints are represented.

The IRS invites interested members of the public to submit written suggestions to help shape this initiative. All submissions will be available for public inspection and copying in their entirety. Members of the public may submit suggestions or drafts by email, mail, or hand-delivery. All comments should refer to Announcement 2009-26, and may be mailed to:

Internal Revenue Service
Attn: Pilar Oberwetter
CE&O, T:EO:CEO (3D1)
1111 Constitution Avenue
Washington, DC 20224

Hand delivered items may be delivered Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., to:

Courier's Desk
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224
Attn: Pilar Oberwetter
CE&O, T:EO:CEO (3D1)

Comments may be submitted electronically to: academic.initiative@irs.gov. Please include Announcement 2009-26 in the subject line of any electronic communications.

Exempt Organizations regrets that it will be unable to respond individually

to suggestions or drafts. All comments should be received by June 6, 2009.

DRAFTING INFORMATION

The principal author of this announcement is Pilar Oberwetter of Exempt Organizations. For further information regarding this announcement, contact Pilar Oberwetter at (202) 283-8946 (not a toll-free call).

Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2009-27

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on April 6, 2009, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband

and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Rocky Mountain Big Horn Sheep Foundation
Red River, MN
Skippers Learning Center
Lake City, SC
Reliable Cash Management Association
Buffalo Grove, IL
Pecan Park Learning Center
Jackson, MS
Brucker Charitable Foundation
Mountain Home, TX
N. U. Yoga Ashrama in America
Winter, WI
Housing Development Group
Denver, CO
National Business Fellowship Foundation
Raeford, NC
GIK Foundation
Bellevue, WA
Debt Free Foundation, Inc.
Provo, UT
Urban Light Community Development
Houston, TX
Sweet Life Program
Las Vegas, NV
Ladoras Family Services Inc
Compton, CA
Robert and Donna Herbolich Charitable Supporting
Hudson, OH
Three Point Volunteer Fire Department, Inc.
Williamsburg, KY
Advance Practice Foundation, Inc.
Basking Ridge, NJ
Goodwill Industries of Greater Cleveland, Inc.
Cleveland, OH
World Project Inc.
Temecula, CA
Sandton Lifestyles
Los Angeles, CA
Dunn-Mason Foundation
Farmington Hills, MI
Walter E & Romell A King Foundation
Gary, IN

Withholding Under Internal Revenue Code Section 3402(t); Hearing

Announcement 2009–29

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on a notice of proposed rulemaking (REG–158747–06, 2009–4 I.R.B. 362) relating to withholding under section 3402(t) of the Internal Revenue Code. The proposed regulations reflect changes in the law made by the Tax Increase Prevention and Reconciliation Act of 2005 that require Federal, State, and local government entities to withhold income tax when making payments to persons providing property or services. These proposed regulations provide guidance to assist the government entities in complying with section 3402(t). The regulations also provide certain guidance to persons receiving payments for property or services from government entities.

DATES: The public hearing is being held on April 16, 2009, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by March 25, 2009.

ADDRESSES: The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Send submissions to: CC:PA:LPD:PR (REG–158747–06), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–158747–06), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Jean Casey, (202) 622–6040; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at Richard.A.Hurst@irscounsel.treas.gov or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–158747–06) that was published in the **Federal Register** on Friday, December 5, 2008 (73 FR 74082).

Persons, who wish to present oral comments at the hearing that submitted writ-

ten comments, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by March 25, 2009.

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

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

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

(Filed by the Office of the Federal Register on March 18, 2009, 8:45 a.m., and published in the issue of the Federal Register for March 19, 2009, 74 F.R. 11699)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

Numerical Finding List¹

Bulletins 2009–1 through 2009–14

Announcements:

2009-1, 2009-1 I.R.B. 242
2009-2, 2009-5 I.R.B. 424
2009-3, 2009-6 I.R.B. 459
2009-4, 2009-8 I.R.B. 597
2009-5, 2009-8 I.R.B. 569
2009-6, 2009-9 I.R.B. 643
2009-7, 2009-10 I.R.B. 663
2009-8, 2009-8 I.R.B. 598
2009-9, 2009-9 I.R.B. 643
2009-10, 2009-9 I.R.B. 644
2009-11, 2009-10 I.R.B. 663
2009-12, 2009-11 I.R.B. 686
2009-13, 2009-11 I.R.B. 686
2009-14, 2009-11 I.R.B. 687
2009-15, 2009-11 I.R.B. 687
2009-16, 2009-11 I.R.B. 691
2009-17, 2009-12 I.R.B. 714
2009-18, 2009-12 I.R.B. 714
2009-19, 2009-12 I.R.B. 715
2009-20, 2009-12 I.R.B. 716
2009-21, 2009-13 I.R.B. 730
2009-22, 2009-13 I.R.B. 731
2009-23, 2009-13 I.R.B. 731
2009-24, 2009-13 I.R.B. 732
2009-25, 2009-14 I.R.B. 755
2009-26, 2009-14 I.R.B. 755
2009-27, 2009-14 I.R.B. 756
2009-29, 2009-14 I.R.B. 757

Notices:

2009-1, 2009-2 I.R.B. 250
2009-2, 2009-4 I.R.B. 344
2009-3, 2009-2 I.R.B. 250
2009-4, 2009-2 I.R.B. 251
2009-5, 2009-3 I.R.B. 309
2009-6, 2009-3 I.R.B. 311
2009-7, 2009-3 I.R.B. 312
2009-8, 2009-4 I.R.B. 347
2009-9, 2009-5 I.R.B. 419
2009-10, 2009-5 I.R.B. 419
2009-11, 2009-5 I.R.B. 420
2009-12, 2009-6 I.R.B. 446
2009-13, 2009-6 I.R.B. 447
2009-14, 2009-7 I.R.B. 516
2009-15, 2009-6 I.R.B. 449
2009-16, 2009-8 I.R.B. 572
2009-17, 2009-8 I.R.B. 575
2009-18, 2009-10 I.R.B. 648
2009-19, 2009-10 I.R.B. 660
2009-20, 2009-12 I.R.B. 711
2009-21, 2009-13 I.R.B. 724

Notices— Continued:

2009-22, 2009-14 I.R.B. 741

Proposed Regulations:

REG-144615-02, 2009-7 I.R.B. 561
REG-148568-04, 2009-5 I.R.B. 421
REG-160872-04, 2009-4 I.R.B. 358
REG-158747-06, 2009-4 I.R.B. 362
REG-116699-07, 2009-13 I.R.B. 727
REG-138326-07, 2009-9 I.R.B. 638
REG-143686-07, 2009-8 I.R.B. 579
REG-150670-07, 2009-4 I.R.B. 378
REG-113462-08, 2009-4 I.R.B. 379
REG-147636-08, 2009-9 I.R.B. 641
REG-150066-08, 2009-5 I.R.B. 423

Revenue Procedures:

2009-1, 2009-1 I.R.B. 1
2009-2, 2009-1 I.R.B. 87
2009-3, 2009-1 I.R.B. 107
2009-4, 2009-1 I.R.B. 118
2009-5, 2009-1 I.R.B. 161
2009-6, 2009-1 I.R.B. 189
2009-7, 2009-1 I.R.B. 226
2009-8, 2009-1 I.R.B. 229
2009-9, 2009-2 I.R.B. 256
2009-10, 2009-2 I.R.B. 267
2009-11, 2009-3 I.R.B. 313
2009-12, 2009-3 I.R.B. 321
2009-13, 2009-3 I.R.B. 323
2009-14, 2009-3 I.R.B. 324
2009-15, 2009-4 I.R.B. 356
2009-16, 2009-6 I.R.B. 449
2009-17, 2009-7 I.R.B. 517
2009-18, 2009-11 I.R.B. 670
2009-19, 2009-14 I.R.B. 747
2009-20, 2009-14 I.R.B. 749

Revenue Rulings:

2009-1, 2009-2 I.R.B. 248
2009-2, 2009-2 I.R.B. 245
2009-3, 2009-5 I.R.B. 382
2009-4, 2009-5 I.R.B. 408
2009-5, 2009-6 I.R.B. 432
2009-6, 2009-12 I.R.B. 694
2009-7, 2009-13 I.R.B. 717
2009-8, 2009-10 I.R.B. 645
2009-9, 2009-14 I.R.B. 735
2009-10, 2009-14 I.R.B. 738

Tax Conventions:

2009-5, 2009-8 I.R.B. 569

Treasury Decisions:

9434, 2009-4 I.R.B. 339
9435, 2009-4 I.R.B. 333

Treasury Decisions— Continued:

9436, 2009-3 I.R.B. 268
9437, 2009-4 I.R.B. 341
9438, 2009-5 I.R.B. 387
9439, 2009-5 I.R.B. 416
9440, 2009-5 I.R.B. 409
9441, 2009-7 I.R.B. 460
9442, 2009-6 I.R.B. 434
9443, 2009-8 I.R.B. 564
9444, 2009-9 I.R.B. 603
9445, 2009-9 I.R.B. 635
9446, 2009-9 I.R.B. 607
9447, 2009-12 I.R.B. 694

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2008–27 through 2008–52 is in Internal Revenue Bulletin 2008–52, dated December 29, 2008.

Finding List of Current Actions on Previously Published Items¹

Bulletins 2009–1 through 2009–14

Notices:

99-35

Obsoleted by
Notice 2009-15, 2009-6 I.R.B. 449

2001-55

Modified by
Notice 2009-1, 2009-2 I.R.B. 250

2002-27

Modified by
Notice 2009-9, 2009-5 I.R.B. 419

2005-74

Obsoleted by
T.D. 9446, 2009-9 I.R.B. 607

2007-26

Modified by
Notice 2009-15, 2009-6 I.R.B. 449

2007-54

Obsoleted by
T.D. 9436, 2009-3 I.R.B. 268

2008-11

Obsoleted by
T.D. 9436, 2009-3 I.R.B. 268

2008-12

Obsoleted by
T.D. 9436, 2009-3 I.R.B. 268
Rev. Proc. 2009-11, 2009-3 I.R.B. 313

2008-13

Obsoleted by
T.D. 9436, 2009-3 I.R.B. 268
List of forms modified and superseded by
Rev. Proc. 2009-11, 2009-3 I.R.B. 313
Modified and clarified by
Notice 2009-5, 2009-3 I.R.B. 309

2008-46

Obsoleted by
T.D. 9436, 2009-3 I.R.B. 268
Rev. Proc. 2009-11, 2009-3 I.R.B. 313

2008-100

Amplified and superseded by
Notice 2009-14, 2009-7 I.R.B. 516

Proposed Regulations:

REG-144615-02

Corrected by
Ann. 2009-19, 2009-12 I.R.B. 715

REG-149519-03

Withdrawn by
Ann. 2009-4, 2009-8 I.R.B. 597

Proposed Regulations— Continued:

REG-148326-05

Corrected by
Ann. 2009-14, 2009-11 I.R.B. 687

REG-158747-06

Hearing scheduled by
Ann. 2009-29, 2009-14 I.R.B. 757

Revenue Procedures:

2007-17

Superseded by
Rev. Proc. 2009-14, 2009-3 I.R.B. 324

2007-68

Superseded by
Rev. Proc. 2009-17, 2009-7 I.R.B. 517

2007-71

Modified by
Notice 2009-3, 2009-2 I.R.B. 250

2008-1

Superseded by
Rev. Proc. 2009-1, 2009-1 I.R.B. 1

2008-2

Superseded by
Rev. Proc. 2009-2, 2009-1 I.R.B. 87

2008-3

Superseded by
Rev. Proc. 2009-3, 2009-1 I.R.B. 107

2008-4

Superseded by
Rev. Proc. 2009-4, 2009-1 I.R.B. 118

2008-5

Superseded by
Rev. Proc. 2009-5, 2009-1 I.R.B. 161

2008-6

Superseded by
Rev. Proc. 2009-6, 2009-1 I.R.B. 189

2008-7

Superseded by
Rev. Proc. 2009-7, 2009-1 I.R.B. 226

2008-8

Superseded by
Rev. Proc. 2009-8, 2009-1 I.R.B. 229

2008-9

Superseded by
Rev. Proc. 2009-9, 2009-2 I.R.B. 256

2008-17

Obsoleted in part by
Rev. Proc. 2009-18, 2009-11 I.R.B. 670

2008-61

Superseded by
Rev. Proc. 2009-3, 2009-1 I.R.B. 107

Revenue Procedures— Continued:

2008-65

Amplified and supplemented by
Rev. Proc. 2009-16, 2009-6 I.R.B. 449

2008-68

Amplified and superseded by
Rev. Proc. 2009-15, 2009-4 I.R.B. 356

Revenue Rulings:

65-286

Obsoleted by
T.D. 9435, 2009-4 I.R.B. 333

71-381

Obsoleted in part by
Rev. Rul. 2009-9, 2009-14 I.R.B. 735

76-54

Obsoleted by
T.D. 9435, 2009-4 I.R.B. 333

92-19

Supplemented by
Rev. Rul. 2009-3, 2009-5 I.R.B. 382

2008-19

Modified by
Rev. Rul. 2009-3, 2009-5 I.R.B. 382

Treasury Decisions:

9436

Corrected by
Ann. 2009-15, 2009-11 I.R.B. 687

9439

Corrected by
Ann. 2009-12, 2009-11 I.R.B. 686

9441

Corrected by
Ann. 2009-18, 2009-12 I.R.B. 714

9442

Corrected by
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¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2008–27 through 2008–52 is in Internal Revenue Bulletin 2008–52, dated December 29, 2008.



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