Internal Revenue

bulletin

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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. 2003–44, page 848.
Low-income housing credit; satisfactory bond; "bond factor" amounts for the period April through June 2003. This ruling announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period April through June 2003.

Notice 2003–22, page 851.
This notice addresses an abusive arrangement designed to circumvent longstanding tax principles and enable the evasion of income and employment taxes on compensation income through the use of unrelated conduit domestic and foreign employee leasing companies.

EMPLOYEE PLANS

Notice 2003–24, page 853.
Collectively-bargained welfare plans; section 419A(f)(5); listed transactions. This notice describes certain abusive situations that may arise where a trust arrangement seeks to qualify for the exception for collectively-bargained welfare benefit plans under section 419A(f)(5) of the Code. The notice states that the Service invites comments on the issue and that certain of the arrangements are listed transactions.

EXEMPT ORGANIZATIONS

Announcement 2003–26, page 862.
Clinica Materno Infantil Plaza 3030, Inc., of Hollywood, Florida no longer qualifies as an organization to which contributions are deductible under section 170 of the Code.

EMPLOYMENT TAX

Notice 2003–22, page 851.
This notice addresses an abusive arrangement designed to circumvent longstanding tax principles and enable the evasion of income and employment taxes on compensation income through the use of unrelated conduit domestic and foreign employee leasing companies.

ADMINISTRATIVE

Rev. Rul. 2003–36, page 849.
Executors, relief from joint and several liability. This ruling provides for an executor (including any other duly appointed representative) to pursue an existing request for relief from joint and several liability or file a request for relief on behalf of a decedent. Section 6903 of the Code provides that any person acting for another person in a fiduciary capacity assumes the rights of that person. This ruling concludes that the authority granted to fiduciaries in section 6903 includes the authority for an executor (including any other duly appointed representative) to seek relief pursuant to section 6015.

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Actions Relating to Court Decisions is on the page following the Introduction.
Announcements of Declaratory Judgment Proceedings Under Section 7428 begin on page 862.
Finding Lists begins on page ii.
Index for January through April begins on page v.

Department of the Treasury
Internal Revenue Service

Notice 2003–25, page 855.
Canadian retirement plan trust reporting. Extension of time to file 2002 Forms 3520 and 3520–A with respect to certain Canadian retirement plans and suspension of requirement to file Form 3520–A with respect to certain Canadian retirement plans for which an election has been made under Rev. Proc. 2002–23.

Notice 2003–26, page 855.
Public comments are requested for items that should be included on the 2003–2004 Guidance Priority List. Taxpayers may submit recommendations at any time during the year. All recommendations received by May 15, 2003, will be reviewed for possible inclusion on the original 2003–2004 Guidance Priority List. Recommendations received after May 15, 2003, will be reviewed for inclusion in the quarterly updates if received by August 31, 2003; November 30, 2003; or February 28, 2004, respectively.

Rev. Proc. 2003–34, page 856.
Changes in accounting periods; approval. Procedures are provided modifying the term and condition for the Commissioner's approval to change an annual accounting period under which the taxpayer generally is precluded from carrying back a net operating loss or capital loss generated in the short taxable year. Rev. Procs. 2002–37 and 2002–39 modified.

Rev. Proc. 2003–36, page 859.
This document provides guidance to business taxpayers, industry associations, and other interested parties to submit issues for consideration under the Service's Industry Issue Resolution (IIR) Program. The objective of the IIR Program is to identify frequently disputed or burdensome tax issues that are common to a significant number of business taxpayers that may be resolved through published or other administrative guidance. Notice 2002–20 superseded.

The IRS Mission

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

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and 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 first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

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Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, "acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, "acquiescence in result only" indicates disagreement or concern with some or all of those reasons. "Nonacquiescence" signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a "nonacquiescence" indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner does NOT ACQUIESCE in the following decision:

Internet Corporation & Subs. v. Commissioner,[1]
Docket No. 8246–97
117 T.C. 133 (filed Oct. 2, 2001)
February 4, 2002

[1] Nonacquiescence in part (prior acquiescence in result, hereby revoked) relating to whether deductions for state income tax deficiencies and interest thereon as well as interest on federal income tax deficiencies, all attributable to tax liabilities arising at least three years before the beginning of the taxable year, and taken into account in computing a net operating loss, qualify for a ten-year carryback as specified liability losses under former I.R.C. section 172(f)(1)(B).

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

Section 42.—Low-Income Housing Credit

Low-income housing credit; satisfactory bond; "bond factor" amounts for the period April through June 2003. This ruling announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period April through June 2003.

Rev. Rul. 2003–44

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

Rev. Proc. 99–11, 1999–1 C.B. 275, established a collateral program as an alternative to providing a surety bond for taxpayers to avoid or defer recapture of the low-income housing tax credits under § 42(j)(6). Under this program, taxpayers may establish a Treasury Direct Account and pledge certain United States Treasury securities to the Internal Revenue Service as security.

This revenue ruling provides in Table 1 the bond factor amounts for calculating the amount of bond considered satisfactory under § 42(j)(6) or the amount of United States Treasury securities to pledge in a Treasury Direct Account under Rev. Proc. 99–11 for dispositions of qualified low-income buildings or interests therein during the period April through June 2003.

Table 1
Rev. Rul. 2003–44
Monthly Bond Factor Amounts for Dispositions Expressed
As a Percentage of Total Credits

	Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year										
Month of Disposition	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Apr '03	16.23	30.04	41.83	51.93	60.50	59.79	59.68	59.68	59.75	59.96	60.20
May '03	16.23	30.04	41.83	51.93	60.50	59.65	59.54	59.54	59.61	59.83	60.07
Jun '03	16.23	30.04	41.83	51.93	60.50	59.51	59.40	59.40	59.48	59.70	59.95

Table 1 (cont'd)
Rev. Rul. 2003–44
Monthly Bond Factor Amounts for Dispositions Expressed
As a Percentage of Total Credits

	Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year			
Month of Disposition	2000	2001	2002	2003
Apr '03	60.49	61.15	62.06	62.68
May '03	60.37	61.04	61.96	62.68
Jun '03	60.26	60.93	61.86	62.68

For a list of bond factor amounts applicable to dispositions occurring during other calendar years, see: Rev. Rul. 98–3, 1998–1 C.B. 248; Rev. Rul. 2001–2, 2001–1 C.B. 255; Rev. Rul. 2001–53, 2001–2 C.B. 488; and Rev. Rul. 2002–72, 2002–44 I.R.B. 759. For dispositions occurring during the period January through March 2003, see Rev. Rul. 2003–22, 2003–8 I.R.B. 494.

DRAFTING INFORMATION

The principal author of this revenue ruling is Gregory N. Doran of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Doran at (202) 622–3040 (not a toll-free call).

Section 442.—Change of Annual Accounting Period

26 CFR 1.442–1: Change of annual accounting period.

Procedures are provided modifying the term and condition for the Commissioner's approval to change an annual accounting period under which the taxpayer generally is precluded from carrying back a net operating loss or capital loss generated in the short taxable year. See Rev. Proc. 2003–34, page 856.

Section 6015.—Relief From Joint and Several Liability on a Joint Return

26 CFR 1.6015–5: Relief from joint and several liability. Time and manner for requesting relief.

Executors, relief from joint and several liability. This ruling provides for an executor (including any other duly appointed representative) to pursue an existing request for relief from joint and several liability or file a request for relief on behalf of a decedent. Section 6903 of the Code provides that any person acting for another person in a fiduciary capacity assumes the rights of that person. This ruling concludes that the authority granted to fiduciaries in section 6903 includes the authority for an executor (including any other duly appointed representative) to seek relief pursuant to section 6015 of the Code.

Rev. Rul. 2003–36

ISSUES

1. Whether an executor (including any other duly appointed representative) of a decedent's estate may pursue a request for relief from joint and several liability under section 6015 of the Internal Revenue Code made during the decedent's lifetime?

2. Whether an executor of a decedent's estate may file a section 6015 request for relief from joint and several liability on behalf of the decedent?

FACTS

Situation 1. W and H were married. For taxable year 2000, W and H claimed deductions on their joint income tax return relating to an investment owned entirely by H. In 2002, the Internal Revenue Service proposed to disallow the deductions and make adjustments to the joint return for taxable year 2000. W then filed a Form 8857, *"Request for Innocent Spouse Relief,"* electing to seek relief under section 6015(b) and (c) or, alternatively, seeking equitable relief under section 6015(f). W died while the request for relief from joint and several liability was pending. The executor of W's estate pursued the request for relief from joint and several liability that W made during her lifetime.

Situation 2. W and H were married. For taxable year 2000, W and H claimed deductions on their joint return relating to an investment owned entirely by H. In 2001, the Service proposed to disallow the deductions and make adjustments to the joint return for taxable year 2000. W died in 2002, and later that year W's executor filed a Form 8857, *"Request for Innocent Spouse Relief,"* electing to seek relief under section 6015.

LAW AND ANALYSIS

Section 6013(a) allows a husband and wife to elect to make a joint income tax return. Section 6013(a)(3) provides that, in the case of death of a husband, wife or both, an executor may make a joint return with respect to a decedent. If an executor is appointed after a surviving spouse makes a joint return, the executor may disaffirm the joint return in the manner prescribed by section 6013(a)(3). If a husband and wife make a joint return, then the liability with respect to the tax shall be joint and several pursuant to section 6013(d)(3).

Under section 6015, an individual who makes a joint return may elect to seek relief from joint and several liability. Section 6015(b) provides procedures for seeking relief from joint and several liability applicable to all joint filers. Relief from joint and several liability pursuant to section 6015(c) only applies to limit tax liability for joint filers who are no longer married, legally separated, or not members of the same household for a period of at least 12 months prior to filing a request. Section 1.6015–3(a) of the Income Tax Regulations provides guidance as to the marital status of a deceased requesting spouse. Section 6015(f) provides authority for the Service to grant equitable relief when relief is not otherwise available under section 6015(b) or (c), if taking into account all the facts and circumstances, the Service determines that an individual seeking relief (a "requesting spouse") should not be held liable.

Section 6015 does not expressly authorize an executor to file a request for relief from joint and several liability resulting from a joint return pursuant to section 6013. The regulations under section 6015, however, contemplate that a requesting spouse may be deceased.

An executor, acting on behalf of a decedent's estate in a fiduciary capacity, is granted broad authority. Some of the authority is explicitly provided by statute and other authority is derived from an executor's fiduciary obligations. The explicit authority of an executor on behalf of a decedent's estate under the Code includes, but is not limited to, requesting prompt assessment and discharge from personal liability under section 6501(d), electing to treat a revocable trust as part of an estate under section 645, electing an alternate valuation date under section 2032, making a qualified terminal interest property election under section 2056(b)(7), electing to extend the time for payment of estate taxes under section 6166, postponing the payment of estate taxes attributable to reversionary or remainder interests under section 6163(a), making a return for a short period under section 443(a), electing to recognize gain or loss on distributions of property in kind under section 643(e), and electing S corporation status under section 1362.

Section 6903 provides that, upon notice to the Secretary that any person is acting for another person in a fiduciary capacity, the fiduciary shall assume the powers, rights, duties, and privileges of the other person in respect of a tax imposed by the Code. The term "fiduciary" is defined in section 7701(a)(6) as a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

Because an executor assumes the rights of a decedent's estate pursuant to the broad grant of authority in section 6903 and has specific authority to make and disaffirm joint returns under section 6013(a)(3), an executor also is authorized to seek relief from joint and several liability pursuant to section 6015 on behalf of a decedent. It makes no difference whether the request for relief is an election pursuant to section 6015(b) or (c), or a request for equitable relief pursuant to section 6015(f). It also follows that an executor may pursue an existing request for relief from joint and several liability pursuant to section 6015 that was made during the requesting spouse's lifetime. The Tax Court implicitly recognized that an executor may pursue an existing request in *Jonson v. Commissioner*, 118 T.C. 106 (2002), *appeal docketed*, No. 02–9009 (10th Cir. May 24, 2002) (taxpayer appeal on other grounds).

While an executor may pursue an existing request or seek relief from joint and several liability under section 6015(c), relief will not be available unless the decedent had satisfied the eligibility requirements while alive. To determine marital status for purposes of section 6015(c), section 1.6015–3(a) of the Income Tax Regulations provides for determination of marital status of a deceased requesting spouse as of the earlier of the date of the section 6015(c) election or the date of death in accordance with section 7703(a)(1). The Tax Court in *Jonson* held that the eligibility requirements under section 6015(c), that the joint filers be no longer married, legally separated, or not members of the same household, cannot be satisfied by the death of a requesting spouse.

HOLDINGS

Situation 1. An executor of a decedent's estate may pursue a section 6015 request for relief from joint and several liability made during the decedent's lifetime.

Situation 2. An executor of a decedent's estate has authority under section 6903 to file a request for relief pursuant to section 6015 as long as the decedent had satisfied any applicable requirements while alive.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jamie G. Bernstein of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact Ms. Bernstein at (202) 622–4940 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Offshore Deferred Compensation Arrangements

Notice 2003–22

The Internal Revenue Service and the Treasury Department have become aware of a type of arrangement, described below, that is being promoted to and used by taxpayers for the purpose of avoiding or evading federal income and employment taxes. This notice alerts taxpayers and their representatives that the tax benefits purportedly generated by these arrangements are not allowable for federal income or employment tax purposes. This notice also alerts taxpayers, their representatives, and promoters of these arrangements of certain responsibilities that may arise from participating in or promoting these arrangements.

FACTS

In general, the arrangement involves a series of steps involving domestic and foreign parties. First, Taxpayer, an individual, purports to terminate Taxpayer's existing employment relationship with a domestic corporation ("Service Recipient Corporation") that may be owned, either directly or indirectly, in whole or in part by Taxpayer. Taxpayer then purports to enter into an employment relationship with a foreign corporation ("Foreign Leasing Corporation") that is incorporated and managed in a country with which the United States has an income tax convention. Foreign Leasing Corporation purports to lease the right to Taxpayer's services in the United States to a domestic corporation ("Domestic Leasing Corporation"). Domestic Leasing Corporation, in turn, purports to lease Taxpayer's services to Service Recipient Corporation.

Before entering into the arrangement, Taxpayer has little or no business relationship either with Foreign Leasing Corporation or with Domestic Leasing Corporation. After entering into the arrangement, Taxpayer continues to provide substantially the same services for Service Recipient Corporation that Taxpayer provided before entering into the arrangement, and, thus, the interposition of Foreign Leasing Corporation and Domestic Leasing Corporation has no significant effect on Taxpayer's performance of services for Service Recipient Corporation.

Service Recipient Corporation makes payments to Domestic Leasing Corporation for Taxpayer's services. Domestic Leasing Corporation makes payments to Taxpayer for Taxpayer's services in an amount substantially less than the amount paid to Domestic Leasing Corporation by Service Recipient Corporation. After deducting a fee for its participation in the arrangement, Domestic Leasing Corporation remits to Foreign Leasing Corporation, in return for Taxpayer's services, the remainder of the amount paid to Domestic Leasing Corporation by Service Recipient Corporation.

Foreign Leasing Corporation deducts a fee from the amount paid by Domestic Leasing Corporation and typically credits the remainder to a notional account maintained on behalf of Taxpayer. In certain cases, Foreign Leasing Corporation transfers the remainder to a trust ("Trust") for the benefit of Taxpayer. Although the assets of Trust may be nominally subject to the claims of Foreign Leasing Corporation's creditors, it is typically difficult or impossible for creditors of Foreign Leasing Corporation, Domestic Leasing Corporation, or Service Recipient Corporation to reach the assets of Trust in the event of insolvency or bankruptcy of any of these entities.

The arrangement is often designed to provide Taxpayer, either directly or indirectly, with explicit or implicit control over the amounts held on Taxpayer's behalf by Foreign Leasing Corporation or Trust. For example, the arrangement may permit or require Foreign Leasing Corporation to provide Taxpayer with a device, such as a credit or debit card, for paying personal, business, or professional expenses out of such amounts. As another example, the arrangement may permit Taxpayer to submit bills and receipts for payment or reimbursement from such amounts or to borrow from such amounts.

Taxpayer takes the reporting position that only the compensation actually paid to Taxpayer by Domestic Leasing Corporation is currently includible in Taxpayer's gross income and that amounts held by Foreign Leasing Corporation or Trust on Taxpayer's behalf are not currently includible in Taxpayer's gross income.

Service Recipient Corporation takes the reporting position that the entire amount paid to Domestic Leasing Corporation in return for Taxpayer's services is currently deductible as a trade or business expense under § 162 of the Internal Revenue Code. Service Recipient Corporation does not treat the amount paid to Domestic Leasing Corporation as compensation to Taxpayer and, therefore, does not report any amount attributable thereto or withhold or pay any amount therefrom for federal tax purposes.

Domestic Leasing Corporation takes the reporting position that both the compensation paid to Taxpayer and the amount paid to Foreign Leasing Corporation are currently deductible as a trade or business expense. Domestic Leasing Corporation does not treat the amount paid to Foreign Leasing Corporation as compensation to Taxpayer and, therefore, does not report any amount attributable thereto or withhold or pay any amount therefrom for federal tax purposes.

Foreign Leasing Corporation takes the position that it is a resident of a country with which the United States has an income tax convention, and that it is entitled to all of the benefits afforded under that convention. Foreign Leasing Corporation also takes the position that, pursuant to the convention, no portion of the amount paid to it by Domestic Leasing Corporation is subject to income tax by the United States because such amount is business profits which are not attributable to a permanent establishment in the United States.

The structure of the arrangement may vary without altering the applicability of this notice to the arrangement. For example, the applicability of this notice is not dependent upon Taxpayer owning Service Recipient Corporation, or Service Recipient Corporation being the same taxpayer before and after Taxpayer enters into the arrangement. Similarly, the applicability of this notice is not dependent upon Domestic Leasing Corporation or Foreign Leasing Corporation existing before Taxpayer enters into the arrangement. In addition, the applicability of this notice to the arrangement is not affected by replacing Domestic Leasing Corporation, Foreign Leasing

Corporation, or Service Recipient Corporation (or two or more of those corporations) with one or more non-corporate entities. Likewise, the applicability of this notice to the arrangement is not affected by replacing Trust with another person or persons, or by involving one or more other corporations or non-corporate entities. These and similar variations are within the scope of this notice. Moreover, the means (if any) by which Taxpayer has control over the amount held by Foreign Leasing Corporation or Trust on Taxpayer's behalf are not limited to the means described in this notice.

ANALYSIS

The arrangement described in this notice involves a series of steps, some or all of which do not reflect the underlying economics of the arrangement, and has been designed to circumvent longstanding legal principles to enable Taxpayer and Service Recipient Corporation to avoid or evade income and employment taxes. Taxpayers who participate in the arrangement may believe they can achieve its purpose or intended result by relying on various documents and agreements, which purportedly create binding and legally enforceable obligations among the parties to the arrangement. The Internal Revenue Service intends to challenge the purported tax benefits claimed for this arrangement on a number of grounds, including, but not limited to, the nature and substance of the arrangement and of the documents and agreements used to facilitate it.

In challenging the purported tax benefits, the Service will, in appropriate cases, assert that Taxpayer's employment by Foreign Leasing Corporation and the additional steps by which Taxpayer's services are leased back to Service Recipient Corporation are disregarded for federal tax purposes. Thus, the Service will assert that Taxpayer remains the employee of Service Recipient Corporation and that amounts paid by Service Recipient Corporation to Domestic Leasing Corporation either (1) are currently includible in Taxpayer's gross income as compensation for services provided to Service Recipient Corporation or (2) are not currently deductible by Service Recipient Corporation.

More specifically, with regard to the tax benefits claimed by Taxpayer and irrespective of whether the Service asserts that the leasing arrangement should be disregarded for tax purposes, the Service may assert, in appropriate cases, that amounts paid to Domestic Leasing Corporation by Service Recipient Corporation have been actually or constructively received by Taxpayer. The Service may assert, in addition or in the alternative, that such amounts are currently includible in Taxpayer's gross income under § 83(a), the economic benefit doctrine, the cash equivalency doctrine, or the assignment of income doctrine, or that such amounts are constructive dividends to Taxpayer.

With regard to Service Recipient Corporation, the Service may assert that the amount paid to Domestic Leasing Corporation, less the amount Domestic Leasing Corporation pays currently to Taxpayer, is nonqualified deferred compensation, the deductibility of which is governed by § 404(a)(5) and which is subject to FICA tax under § 3121(v)(2), or property transferred to Taxpayer in connection with the performance of services, the deductibility of which is governed by § 83(h) and which is subject to FICA tax under § 3121(a) or 3121(v)(2). The Service also may disallow the deductibility of such amount as (1) not being an ordinary and necessary business expense under § 162 or (2) being a nondeductible constructive dividend to Taxpayer.

Finally, the Service also may challenge attempts to apply a tax convention between the United States and a foreign country to the arrangement in a manner that is inconsistent with the way the arrangement is characterized for United States tax purposes.

Arrangements that are the same as, or substantially similar to, the arrangement ("Offshore Deferred Compensation Arrangement") described in this notice are, with respect to Taxpayer, Service Recipient Corporation, and Domestic Leasing Corporation, identified as "listed transactions" for purposes of § 1.6011–4(b)(2) of the Income Tax Regulations and §§ 301.6111–2(b)(2) and 301.6112–1(b)(2) of the Procedure and Administration Regulations. Further, it should be noted that, independent of their classification as "listed transactions" for purposes of §§ 1.6011–4(b)(2), 301.6111–2(b)(2), and 301.6112–1(b)(2), arrangements that are the same as, or substantially similar to, an Offshore Deferred Compensation Arrangement may already be subject to the disclosure requirements of § 6011, the tax shelter registration requirements of § 6111, or the list maintenance requirements of § 6112 (§§ 1.6011–4, 301.6111–1T, 301.6111–2, and 301.6112–1).

Persons who are required to satisfy the registration requirement of § 6111 with respect to the arrangement described in this notice and who fail to do so may be subject to the penalty under § 6707(a). Persons who are required to satisfy the list-keeping requirement of § 6112 with respect to the transaction and who fail to do so may be subject to the penalty under § 6708(a). In addition, the Service may impose penalties on participants in this arrangement or substantially similar arrangements, or, as applicable, on persons who participate in the promotion or reporting of this arrangement or substantially similar arrangements, including the accuracy-related penalty under § 6662, the return preparer penalty under § 6694, the promoter penalty under § 6700, and the aiding and abetting penalty under § 6701. In addition to other penalties, any person who willfully attempts to evade or defeat tax by means of the arrangement described in this notice or substantially similar arrangements, or who willfully counsels or advises such evasion or defeat, may be guilty of a criminal offense under §§ 7201, 7203, 7206, or 7212(a) or other provisions of federal law.

The Service cautioned taxpayers against the arrangement described in this notice in a recent outreach project. Although that particular outreach project was directed toward medical professionals, the applicability of this notice is not dependent upon Taxpayer being a medical professional. Taxpayers can obtain copies of the Service's alert on the IRS web site at *www.irs.gov* — search term "employee leasing."

Taxpayers who have participated or who are currently participating in the arrangement described in this notice are encouraged to apply to participate in the Offshore Voluntary Compliance Initiative described in Rev. Proc. 2003–11, 2003–4 I.R.B. 311.

The principal author of this notice is Ken Griffin of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Mr. Griffin at (202) 622–6030 (not a toll-free call).

Tax Problems Raised by Certain Trust Arrangements Seeking to Qualify for Exception for Collectively Bargained Welfare Benefit Funds Under § 419A(f)(5)

Notice 2003–24

The Internal Revenue Service and the Treasury Department have become aware of certain arrangements purporting to qualify as collectively-bargained welfare benefit funds excepted from the account limits of § 419 and § 419A of the Internal Revenue Code. This notice alerts taxpayers and their representatives that the tax benefits purportedly generated by these transactions are not allowable for federal income tax purposes. This notice also identifies some purported collectively bargained arrangements as listed transactions and alerts taxpayers, their representatives, and organizers or sellers of these transactions to certain responsibilities that may arise from participating in these transactions.

In general, contributions to a welfare benefit fund are deductible when paid, but only if they qualify as ordinary and necessary business expenses of the taxpayer and only to the extent allowable under § 419 and § 419A of the Code. Those sections impose strict limits on the deduction for contributions in excess of current costs. An exception to some of the limits is provided under § 419A(f)(5) for contributions to a separate welfare benefit fund under a collective bargaining agreement. The exception is based in part on the premise that deductions in such a setting will not be excessive because of the arms' length negotiations between adversary parties inherent in the collective bargaining process. *See* S. Rep. No. 313, 99th Cong., 2nd Sess. 1010 (1986), 1986–3 C.B. (Vol. 3) 1, 1010.

Section 1.419A–2T, Q&A–2, of the Income Tax Regulations sets out a number of requirements that a fund must meet in order to qualify as a welfare benefit fund under a collective bargaining agreement for purposes of § 419A(f)(5) of the Code. One of those requirements is that the benefits provided through the fund were the subject of arms-length negotiations between employee representatives and one or more employers. Another requirement is that the circumstances surrounding a collective bargaining agreement must evidence good faith bargaining between adverse parties over the welfare benefits to be provided through the fund.

Section 7701(a)(46) of the Code provides, in part, that an agreement will not be treated as a collective bargaining agreement unless it is a *bona fide* agreement between *bona fide* employee representatives and one or more employers. When this language was added to the Code in 1986, the Committee on Ways and Means reported that some promoters of tax avoidance arrangements were entering into arrangements with employers under which, superficially, the employer and its employees were represented by agents in collective bargaining. The Committee noted that the named bargaining agent for the employees may have obtained a ruling by the Internal Revenue Service that the agent is exempt from tax as a labor organization. Even so, the Committee noted, no good faith bargaining occurred under this type of arrangement because the bargaining agent for the employees merely acts in concert with the named bargaining agent for the employer. The Committee Report states:

> The committee believes that these arrangements are, in fact, designed for no material purpose other than the improper exploitation of provisions that are appropriate only for legitimate collectively bargained plans. The committee wishes to make clear that it does not regard such an arrangement as the product of good faith bargaining and that it does not consider an entity to be an employee representative merely because of its status for tax exemption or a determination by the Internal Revenue Service with respect to that status.

H.R. Rep. No. 426, 99th Cong., 1st Sess. 760 (1986), 1986–3 C.B. (Vol. 2) 1, 760.

A number of business owners have been approached about arrangements that purportedly allow the business to take a current tax deduction for all contributions to a welfare benefit fund. Prior to this contact, these businesses typically have had no involvement with labor organizations or other aspects of the collective bargaining process. The promoters of these arrangements rely on § 419A(f)(5), claiming that the benefits are provided under a collective bargaining agreement. The individual or company promoting the arrangement typically arranges for an organization (sometimes referred to as a management group) to act on the business's behalf in bargaining with an employee representative over benefits to be provided to some or all of the employees of the business (including employees who are also owners of the business) and over certain other terms. While its name may include the word "union," the employee representative is often established specifically for the purpose of the welfare benefit arrangement that is being promoted. In other cases, the employee representative may be affiliated with an established union.

These arrangements usually require large employer contributions relative to the amount actually needed to provide the current coverage for the welfare benefits under the arrangement. Typically, benefits that are provided or expected to be provided to employees who are also owners are more favorable than the benefits provided to employees who are not owners. For example, if death benefit protection is being provided, owners may be covered by cash value life insurance policies (and entitled to certain benefits resulting from amounts accumulating under those policies) while other employees receive only term insurance coverage or other less valuable coverage than that provided to the owners.

In some of the arrangements, participants can access funds by obtaining a loan from the trust. While the plan documents may indicate that the loans are available only for unanticipated future events, in reality, most owners will be able to obtain a loan without regard to whether those events occur.

Often, the arrangement will operate to allow the owner or owners to benefit from any contributions to the trust in excess of amounts actually used to provide coverage to other employees.

In general, these arrangements and other similar arrangements do not satisfy the requirements of § 419A(f)(5) of the Code and do not provide the tax deductions claimed by their promoters. For example, if an employer (or its agent) bargains for benefits to be provided to employees, including the owner or owners of that employer, and the benefits to be provided to an owner are more favorable than those provided to other employees, the circumstances of that bargaining process strongly indicate a lack of the good faith bargaining required to satisfy the conditions for the § 419A(f)(5) exception. Further, even if the stated benefits

for an owner are not more favorable than those for other employees (*e.g.*, all benefits are based on a uniform percentage of compensation), the facts and circumstances of the particular arrangement or the bargaining process may indicate that the good faith bargaining requirement, or another requirement to be treated as a collective bargaining agreement for purposes of § 419A(f)(5), has not been met.

In addition, an employer's deduction for contributions to the trust will be subject to the deduction limits of §§ 419 and 419A of the Code if it is not a "separate" welfare benefit fund under a collective bargaining agreement. Moreover, the deduction may be subject to or disallowed by other provisions of the Code. For example, depending on the facts and circumstances, the arrangement may actually be providing deferred compensation or a constructive dividend to an owner rather than welfare benefits. If the arrangement is providing deferred compensation, the employer's deduction for contributions to the trust is governed by § 404(a)(5) of the Code, rather than by §§ 419 and 419A. If the arrangement is providing a constructive dividend, to the extent of the constructive dividend, the contributions are not deductible at all.

Taxpayers and their representatives should be aware that the Service has disallowed deductions for contributions to these types of arrangements in the past and intends to do so in the future.

The Service would like to emphasize that the fact that a trust used to provide benefits under an arrangement may have received a determination letter stating that the trust is exempt under § 501(c)(9) of the Code has no relevance to the issues discussed in this notice. A determination letter under § 501(c)(9) determines only the tax status of the trust. It does not determine the tax deductibility of contributions to such a trust, nor does it determine the taxation of the benefits provided through the fund to the participants. Also, as provided by regulations, even if a union has been recognized as exempt under § 501(c)(5), the Service nevertheless has the authority to determine whether there is a collective bargaining agreement under the Code. Regs. § 301.7701–17T.

Listed Transactions

The following arrangements, and any arrangement that is substantially similar to one of the following arrangements, are identified as "listed transactions" for purposes of § 1.6011–4(b)(2) of the Income Tax Regulations and § 301.6111–2(b)(2) and § 301.6112–1(b)(2) of the Procedure and Administration Regulations. For purposes of determining whether an arrangement is a listed transaction described in this notice, the term owner refers to a "key employee" as defined in § 416(i)(1) of the Code, other than an individual who is a key employee solely by reason of § 416(i)(1)(A)(i) (officers having annual compensation greater than a specified amount).

Any arrangement involving a purported collectively bargained welfare benefit fund is a listed transaction with respect to an employer if, in any year, the employer's contributions with respect to any owner or owners of the employer, considered in the aggregate, are more than one-half of the employer's total contributions, but only if there is at least one owner with respect to whom the employer's contributions exceed $20,000. For this purpose, an employer's contributions with respect to an owner means employer contributions used to fund the coverage or benefits for the owner, including any employer contributions used to pay premiums on an insurance contract covering the owner.

Any arrangement involving a purported collectively bargained welfare benefit fund is a listed transaction with respect to an employer if it provides more favorable coverage for an owner of the employer than for employees who are not owners. Even if the stated coverage under an arrangement is not more favorable for an owner, an arrangement provides more favorable coverage for an owner (and thus is a listed transaction) if it has any attributes that are likely to result in an owner actually receiving more favorable coverage or benefits than other employees, either during the term of the purported collective bargaining agreement or after the agreement has terminated. An arrangement that provides coverage based on a uniform percentage of each employee's compensation will not be treated as providing more favorable coverage to an owner merely because the owner has higher coverage as a result of the owner's higher compensation.

Some examples of purported collectively bargained arrangements that have attributes likely to result in an owner actually receiving more favorable coverage or benefits than other employees are as follows:

> An arrangement providing death benefits based on a uniform multiple of compensation, if it can be expected that an owner will obtain other benefits, such as rights to accumulated amounts under the arrangement, that are not available on the same basis to other employees;
>
> An arrangement allowing loans to participants under which it can be expected that an owner will be able to obtain the loans more readily, or on better terms, than the other employees;
>
> An arrangement providing benefits only to participants who have completed a specified number of years of service with the employer, if it can be expected that one or more owners will be the only employees to satisfy the years-of-service requirement.

It should be noted that, independent of any classification as "listed transactions" for purposes of §§ 1.6011–4(b)(2), 301.6111–2(b)(2), and 301.6112–1(b)(2) of the regulations, arrangements that are the same as, or substantially similar to, the arrangements described in this notice may already be subject to the disclosure requirements of § 6011 of the Code, the tax shelter registration requirements of § 6111 or the list maintenance requirements of § 6112 (§§ 1.6011–4, 301.6111–1T, 301.6111–2, and 301.6112–1).

Persons who are required to satisfy the registration requirement of § 6111 of the Code with respect to the arrangements described in this notice and who fail to do so may be subject to the penalty under § 6707(a). Persons who are required to satisfy the list-keeping requirement of § 6112 with respect to the arrangements and who fail to do so may be subject to the penalty under § 6708(a). In addition, the Service may impose penalties on participants in these arrangements or substantially similar arrangements, or, as applicable, on persons who participate in the promotion or reporting of these arrangements or substantially similar arrangements, including the accuracy-related penalty under § 6662, the return preparer penalty under § 6694, the promoter penalty under § 6700, and the aiding and abetting penalty under § 6701. In addition to other penalties, any person who willfully attempts to evade or defeat tax by means of the arrangements described in this notice, or who willfully counsels or advises such evasion or defeat, may be guilty

of a criminal offense under §§ 7201, 7203, 7206, or 7212(a) or other provisions of federal law.

Future Regulations

The Service is planning to publish proposed regulations under § 419A(f)(5) that will address, among other things, the "separate" fund requirement discussed above. The Service understands that there are *bona fide* collectively bargained welfare benefit plans that provide benefits to one or more employees who are not collectively bargained, and that some of these plans might not have maintained a separate and distinct fund for only the collectively bargained employees. The Treasury and the Service request comments from the public regarding the "separate" fund requirement in advance of publishing the proposed regulations.

Those comments may be mailed to CC:PA:RU (Notice 2003–24), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, comments may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (Notice 2003–24), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or submitted electronically to: *Notice.Comments@irscounsel.treas.gov*. Comments should be submitted no later than August 3, 2003. All comments will be available for public inspection and copying.

Drafting Information

The principal authors of this notice are Louis Leslie of the Employee Plans, Tax Exempt and Government Entities Division and Betty Clary of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Mr. Leslie at (202) 283–9888 (not a toll-free call) or Ms. Clary at (202) 622–6080 (not a toll-free call).

Canadian Retirement Plan Trust Reporting

Notice 2003–25

Internal Revenue Code section 6048 requires information reporting with respect to certain foreign trusts. Persons subject to these information reporting rules must file Form 3520 (*Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts*) or Form 3520–A (*Annual Information Return of Foreign Trust With a U.S. Owner*), as applicable.

Form 3520 is generally filed on an annual basis on or before the due date for the U.S. owner's or U.S. beneficiary's income tax return. A person may obtain an extension of time to file Form 3520 by obtaining an extension of time to file the applicable income tax return. Form 3520–A is generally due by the fifteenth day of the third month after the end of the trust's tax year. A person may seek an extension of time to file Form 3520–A by filing Form 2758 (*Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns*). Specific penalties under Internal Revenue Code section 6677 apply if a Form 3520 or Form 3520–A is not timely filed or if the required information is incomplete or incorrect.

Treasury and the Internal Revenue Service have become aware that many taxpayers with interests in Canadian registered retirement savings plans (RRSPs), as well as the custodians of such plans, are unfamiliar with the requirements for filing Forms 3520 and 3520–A. Under the circumstances, the IRS has determined that it will enforce neither filing requirements, nor penalties under section 6677, for Forms 3520 and 3520–A with respect to such plans for tax years before 2002, and will grant additional time to file these forms for 2002. Any person who is required to file a 2002 Form 3520 or Form 3520–A with respect to an RRSP or other eligible plan within the meaning of section 3 of Revenue Procedure 2002–23, 2002–1 C.B. 744, is granted an automatic extension of time to file until August 15, 2003. If a person obtains an extension of time to file a Form 3520 or Form 3520–A for a date later than August 15, 2003, then such later extension date applies. Penalties for failure to file will not apply to a person who files by the relevant extension date.

In addition, if the beneficiary of an eligible plan has made an election in accordance with section 4 of Rev. Proc. 2002–23 and the beneficiary complies with the annual reporting requirements of Rev. Proc. 2002–23, the plan is relieved of any obligation to file Form 3520–A for any year for which such requirements are met.

Treasury and the IRS are interested in establishing for future taxable years a simplified reporting regime for RRSPs and persons with interests in RRSPs. In addition to streamlining the reporting requirements, Treasury and the IRS are considering coordinating them with the election described in Rev. Proc. 2002–23. Treasury and the IRS also will consider whether there are other pension plans similar to RRSPs for which similar simplified reporting is appropriate.

The principal author of this notice is Amanda A. Ehrlich of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Amanda A. Ehrlich or Willard W. Yates at (202) 622–3880 (not a toll-free call).

Public Comment Invited on Recommendations for 2003–2004 Guidance Priority List

Notice 2003–26

The Department of Treasury and Internal Revenue Service invite public comment on recommendations for items that should be included on the 2003–2004 Guidance Priority List.

Treasury's Office of Tax Policy and the Service use the Guidance Priority List each year to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. The 2003–2004 Guidance Priority List sets forth guidance that the Treasury Department and the Service intend to issue from July 1, 2003, through June 30, 2004. The Treasury Department and the Service recognize the importance of public input to formulate a Guidance Priority List that focuses resources on guidance items that are most important to taxpayers and tax administration.

In reviewing recommendations and selecting projects for inclusion on the 2003–2004 Guidance Priority List, the Treasury Department and the Service will consider the following:

1. Whether the recommended guidance is consistent with the Internal Revenue Code and Congressional intent;

2. Whether the recommended guidance promotes sound tax administration;

3. Whether taxpayers can easily understand and apply the recommended guidance;

4. Whether the Service can enforce the recommended guidance on a uniform basis; and

5. Whether the recommended guidance reduces controversy or lessens the burden on taxpayers and the Service.

Taxpayers may submit recommendations for guidance at any time during the year. Please submit recommendations by May 15, 2003, for possible inclusion on the original 2003–2004 Guidance Priority List. The Service will update the 2003–2004 Guidance Priority List quarterly to reflect additional guidance that the Treasury Department and the Service intend to publish during the plan year. The quarterly updates allow the Treasury Department and the Service to respond to the need for additional guidance that may arise during the plan year. Generally, recommendations for guidance received after May 15, 2003, will be reviewed for inclusion in the next quarterly update if received by August 31, 2003; November 30, 2003; or February 28, 2004, respectively.

Taxpayers are not required to submit recommendations for guidance in a particular format. Taxpayers should, however, briefly describe the recommended guidance and explain the need for the guidance. In addition, taxpayers may include an analysis of how the issue should be resolved.

Taxpayers should send written comments to:

Internal Revenue Service
Attn: CC:PA:RU (Notice 2003–26)
Room 5226
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

or hand deliver comments between the hours of 8 a.m. and 5 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PA:RU (Notice 2003–26)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Alternatively, taxpayers may submit comments electronically via e-mail to the following address: *Notice.Comments@irscounsel.treas.gov.* Taxpayers should include "Notice 2003–26" in the subject line. All comments will be available for public inspection and copying in their entirety.

For further information regarding this notice, contact Crystal Foster of the Office of Associate Chief Counsel (Procedure and Administration) at (202) 622–4652 (not a toll-free call).

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26 CFR 601.204: Changes in accounting periods and methods of accounting.
(Also Part I, §§ 442; 1.442–1)

Rev. Proc. 2003–34

SECTION 1. PURPOSE

.01 This revenue procedure modifies one of the terms and conditions under which the Internal Revenue Service grants approval of requests for changes in annual accounting periods filed under Rev. Proc. 2002–37, 2002–22 I.R.B. 1030, and Rev. Proc. 2002–39, 2002–22 I.R.B. 1046. Specifically, this revenue procedure modifies the term and condition pursuant to which taxpayers generally are prohibited from carrying back net operating losses (NOLs) and capital losses (CLs) generated in the short period necessary to effect the change. *See* section 6.08 of Rev. Proc. 2002–37, and section 5.04(6) of Rev. Proc. 2002–39.

.02 The Modified Carryback Term and Condition of section 4.01 of this revenue procedure generally applies, in the case of taxpayers within the scope of Rev. Proc. 2002–37, to taxable years ending on or after April 8, 2003, and, in the case of certain taxpayers within the scope of Rev. Proc. 2002–39, to applications filed on or after that date. In addition, section 5 of this revenue procedure allows certain qualifying taxpayers that previously changed their annual accounting period (either automatically or with prior approval) to elect to apply either (1) the Modified Carryback Term and Condition, under which the loss is carried back to the applicable number of years prescribed by § 172 or 1212 of the Internal Revenue Code as it would have applied to the short period; or (2) in the case of taxpayers with certain NOLs arising in short periods ending during 2001 or 2002, an Alternative Carryback Term and Condition under which the NOL is carried back to each of the 2 taxable years preceding the short period.

SECTION 2. BACKGROUND

.01 Section 442 and § 1.442–1(a) of the Income Tax Regulations generally provide that a taxpayer that wants to change its annual accounting period and use a new taxable year must obtain the approval of the Commissioner.

.02 Section 1.442–1(b)(2) provides, in relevant part, that a change in annual accounting period will be approved only where the taxpayer agrees to the Commissioner's prescribed terms, conditions, and adjustments for effecting the change.

.03 Section 1.442–1(b)(3) provides that such terms, conditions, and adjustments may include adjustments necessary to neutralize the tax effects of a substantial distortion of income that would otherwise result from the requested annual accounting period, including, for example, the creation of a short period in which there is a substantial NOL, CL, or credit (including a general business credit).

.04 Section 172(b)(1)(A)(i) generally provides that an NOL for any taxable year must be carried back to each of the 2 taxable years preceding the taxable year of such NOL, unless the taxpayer elects to forgo the carryback period by attaching a statement to the taxpayer's timely filed original federal income tax return for the loss year. *See* § 172(b)(3). Section 172(b)(1)(H) provides that NOLs arising in a taxable year ending during 2001 and 2002 must be carried back to each of the 5 taxable years preceding the taxable year of such NOL, unless the taxpayer elects to forgo the carryback period entirely under § 172(b)(3), or elects under § 172(j) to forgo the 5-year carryback period in favor of a 2-year carryback period. In addition, § 172 provides special rules (including different carryback periods) for certain net operating losses, such as specified liability losses, casualty losses, and net operating losses incurred by real estate investment trusts and farming businesses.

.05 Section 1212 generally provides that if a corporation has a net CL for any taxable year, the net CL generally must be carried back to each of the 3 taxable years preceding the taxable year of the CL.

.06 Rev. Proc. 2002–37 provides the exclusive procedures for certain corporations to obtain automatic approval of the Commissioner to change their annual accounting periods. Rev. Proc. 2002–37 modi-

fies, amplifies, and supersedes Rev. Proc. 2000–11, 2000–1 C.B. 309.

.07 Rev. Proc. 2002–39 provides the general procedures for establishing a business purpose and obtaining the approval of the Commissioner to adopt, change, or retain an annual accounting period in cases where the taxpayer does not meet the requirements for using an automatic approval revenue procedure.

.08 Section 6.08 of Rev. Proc. 2002–37 provides, as a term and condition for automatic approval, that a corporation generally is prohibited from carrying back an NOL or CL generated in the short period (the "Original Carryback Term and Condition"). The Original Carryback Term and Condition, however, is not imposed if the NOL or CL either (1) is $50,000 or less; or (2) results from a short period of 9 months or longer and is less than the NOL or CL for the 12-month period beginning with the first day of the short period. Section 5.04(6) of Rev. Proc. 2002–39 also imposes the Original Carryback Term and Condition for prior approval of a change in annual accounting period. Moreover, the Service has imposed a similar term and condition in consent letters issued prior to Rev. Proc. 2002–39. The purpose of the Original Carryback Term and Condition is to prevent artificial distortions of income from NOLs and CLs that are generated in the short period.

.09 The Service has determined that the purpose of the Original Carryback Term and Condition would not be frustrated if the exception to that term were expanded to include short periods of less than 9 months, provided that the NOL or CL generated in such short period were less than the NOL or CL for the 12-month period beginning with the first day of the short period.

.10 In an effort to provide relief to taxpayers who may have been economically disadvantaged by the events of September 11, 2001, the Service is also permitting certain taxpayers who received approval to change an annual accounting period for which the short period began on or after February 1, 2000, and whose short period loss would have qualified for the expanded exception, to carry back an NOL or CL generated in the short period.

SECTION 3. SCOPE

.01 *In General*. This revenue procedure generally applies to any taxpayer that requests to change the taxpayer's annual accounting period under Rev. Proc. 2002–37 or Rev. Proc. 2002–39.

.02 *Prior Accounting Period Changes*. This revenue procedure also applies to any taxpayer if:

(1) prior to April 8, 2003, the taxpayer either filed an application for automatic approval to change the taxpayer's annual accounting period under Rev. Proc. 2002–37 (or any predecessor), or received prior approval to change its annual accounting period by a letter issued by the national office (whether or not issued under Rev. Proc. 2002–39);

(2) the administrative procedure, letter ruling, or consent letter under which the taxpayer made the change, as a term and condition of the change, prohibited the taxpayer from carrying back an NOL or CL generated in the short period because the short period was less than 9 months;

(3) the NOL or CL generated in the short period is less than the NOL or CL for the full 12-month period beginning with the first day of the short period; and

(4) the short period necessary to effect the change began on or after February 1, 2000.

SECTION 4. MODIFIED CARRYBACK TERM AND CONDITION

.01 Section 6.08 of Rev. Proc. 2002–37 and section 5.04(6) of Rev. Proc. 2002–39 are modified to read as follows:

"If the taxpayer generates a net operating loss (NOL) or capital loss (CL) in the short period required to effect a change in annual accounting period, the taxpayer may not carry the NOL or CL back, but must carry it over in accordance with the provisions of §§ 172 and 1212, respectively, beginning with the first taxable year after the short period. However, except as otherwise provided in the Code or regulations, the short period NOL or CL must be carried back or carried over in accordance with § 172 or 1212, respectively, if it is either: (a) $50,000 or less; or (b) less than the NOL or CL, respectively, generated for the full 12-month period beginning with the first day of the short period. The taxpayer must wait until this 12-month period has expired to determine whether the taxpayer qualifies for the exception in (b) above."

.02 A taxpayer that is eligible to carry back an NOL and wishes to forego the carryback of such NOL must do so by making a timely election to waive the entire carryback period under § 172(b)(3), or have in place an election under § 1502–21(b)(3)(ii)(B).

SECTION 5. OPTIONAL TERMS AND CONDITIONS FOR TAXPAYERS WITH PRIOR ACCOUNTING PERIOD CHANGES

.01 *In General*. Pursuant to the Commissioner's authority under § 442 to prescribe terms and conditions necessary to effect a change in annual accounting period, this section provides that a taxpayer described in section 3.02 of this revenue procedure may elect to apply to all NOLs and CLs attributable to the short period, in lieu of the Original Carryback Term and Condition, either: (a) the Modified Carryback Term and Condition of section 4.01 of this revenue procedure (see section 5.02 of this revenue procedure); or (b) if the short period ends during 2001 or 2002, the Alternative Carryback Term and Condition (see section 5.03 of this revenue procedure). Unless such a taxpayer satisfies the applicable requirements of section 6 of this revenue procedure for timely electing one of the optional carryback terms and conditions described in this section 5, the Original Carryback Term and Condition will continue to apply. A taxpayer with both an NOL and a CL for the short period must apply the same term and condition (Original, Modified, or Alternative) to both the NOL and CL.

.02 *Modified Carryback Term and Condition*. A taxpayer described in section 3.02 of this revenue procedure may elect to apply the Modified Carryback Term and Condition of section 4.01 of this revenue procedure by following the procedures set forth in section 6 of this revenue procedure. Thus, if a taxpayer elects to apply the Modified Carryback Term and Condition, NOLs and CLs generated in the short period must be carried back in accordance with § 172 or 1212, whichever applies, except as otherwise provided in the Code or regulations. For example, an NOL generated in a short period ending in 2001 generally must be carried back 5 taxable years under § 172(b)(1)(H), and an NOL generated in a short period ending in 2000 generally must be carried back 2 taxable years under § 172(b)(1)(A)(i) (unless one of the special carryback periods or limitations of § 172 applies).

.03 *Alternative Carryback Term and Condition*.

(1) *In general*. If a taxpayer described in section 3.02 of this revenue procedure has a short period that ends in 2001 or 2002, the taxpayer may elect to apply the Alternative Carryback Term and Condition of this section 5.03, in lieu of either the Original Carryback Term and Condition or the Modified Term and Condition, by following the procedures set forth in section 6 of this revenue procedure.

(2) *Alternative Carryback Term and Condition*. If the taxpayer generates an NOL or CL in the short period required to effect a change in annual accounting period, and the short period ends in 2001 or 2002, the taxpayer may not carry the NOL or CL back, but must carry it over in accordance with the provisions of §§ 172 and 1212, respectively, beginning with the first taxable year after the short period. However, if the short period NOL or CL is either: (a) $50,000 or less; or (b) less than the NOL or CL, respectively, generated for the full 12-month period beginning with the first day of the short period, such short period NOL must be carried back to each of the 2 taxable years preceding the short period (and any remaining NOL must be carried over in accordance with the provisions of § 172) and any short period CL must be carried back or carried over in accordance with § 1212. The taxpayer must wait until the 12-month period has expired to determine whether the taxpayer qualifies for the exception in (b) above.

(3) *Other limitations*. The Alternative Carryback Term and Condition is not available to a taxpayer whose NOL for the short period is subject to the provisions of:

(a) § 172(b)(1)(B) (regarding NOLs of real estate investment trusts);

(b) § 172(b)(1)(C) (regarding specified liability losses);

(c) § 172(b)(1)(E) (regarding certain excess interest losses);

(d) § 172(b)(1)(F) (regarding a certain 3-year carryback in certain cases); or

(e) § 172(b)(1)(G) (regarding farming losses).

.04 *Special Elections for Consolidated Groups*. This paragraph 5.04 applies to a taxpayer that is a consolidated group that:

(1) is described in section 3.02 of this revenue procedure;

(2) includes a member that was a member of another group immediately before it became a member of the consolidated group (acquired member); and

(3) elects either the Modified Carryback Term and Condition of section 4.01 of this revenue procedure, or the Alternative Carryback Term and Condition of section 5.03 of this revenue procedure.

A consolidated group to which this paragraph applies may make an irrevocable election to relinquish, with respect to all consolidated net operating losses for the short period attributable to the acquired member, the portion of the carryback period for such loss for which the acquired member was a member of another group to the extent such portion of the carryback period includes one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss. Additionally, if an acquired member became a member of the consolidated group to which this paragraph applies after June 25, 1999, the consolidated group may make an irrevocable election to relinquish, with respect to all consolidated net operating losses for the short period attributable to the acquired member, the entire portion of the carryback period for which the acquired member was a member of another group. The elections described in the prior 2 sentences may be made only if any other corporation joining the consolidated group that was affiliated with the acquired member immediately before it joined the consolidated group is also included in the election. The elections are made by following the procedures set forth in section 6 of this revenue procedure.

SECTION 6. PROCEDURES FOR ELECTING OPTIONAL TERMS AND CONDITIONS OF SECTION 5.

.01 *Time and Manner for Making Elections*

(1) *In general*. The election to apply either the Modified Carryback Term and Condition of section 4.01 of this revenue procedure, or the Alternative Carryback Term and Condition of section 5.03 of this revenue procedure, must be made on a statement filed with the appropriate Internal Revenue Service Center in accordance with the procedures described in this section 6.01. A taxpayer wishing to make one of the Special Elections for Consolidated Groups under section 5.04 of this revenue procedure must make such election with the election to apply either the Modified Carryback Term and Condition of section 4.01 of this revenue procedure or the Alternative Carryback Term and Condition of section 5.03.

(2) *Time for making election*. An election to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition in lieu of the Original Carryback Term and Condition must be made no later than September 30, 2003. The Special Elections for Consolidated Groups of section 5.04 of this revenue procedure must be made concurrently with the election to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition.

(3) *Manner of making elections*.

(a) *What to file*. A taxpayer may elect to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition, and may make one of the Special Elections for Consolidated Groups, by filing with the appropriate Internal Revenue Service Center on or before September 30, 2003, whichever of the following statements applies. The statements must be signed and dated by the taxpayer, the taxpayer's authorized representative, or other person authorized to bind the taxpayer with respect to federal income tax matters.

(i) *Election to apply Modified Carryback Term and Condition of section 4.01*:

"ELECTION UNDER REVENUE PROCEDURE 2003–34. By this statement, [insert taxpayer name and EIN or SSN] elects to apply the Modified Carryback Term and Condition of section 4.01 of Rev. Proc. 2003–34 to any net operating loss and capital loss arising in a short taxable year ending [insert date short taxable year ended]. Under the Modified Carryback Term and Condition, net operating losses and capital losses arising in the short taxable year must be carried back and carried over in accordance with the applicable provisions of sections 172 and 1212 of the Code."; or

(ii) *Election to apply Alternative Carryback Term and Condition of section 5.03:*

"ELECTION UNDER REVENUE PROCEDURE 2003–34. By this statement, [insert taxpayer name and EIN or SSN] elects to apply the Alternative Carryback Term and Condition of section 5.03 of Rev. Proc. 2003–34 to any net operating loss and capital loss arising in a short taxable year

ending [insert date short taxable year ended]. Under the Alternative Carryback Term and Condition, any net operating loss arising in this short taxable year must be carried back to each of the 2 taxable years preceding the short taxable year (and any remaining net operating loss must be carried over in accordance with the provisions of section 172 of the Code) and any capital loss arising in this short taxable year must be carried back or carried over in accordance with section 1212."

(iii) *Special elections for consolidated groups*. A consolidated group that wishes to make one of the elections under section 5.04 of this revenue procedure (acquiring group) must attach one of the following statements to the election to apply the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition:

"SPECIAL ELECTION TO WAIVE PRE-ACQUISITION EXTENDED CARRYBACK PERIOD. This is an election under section 5.04 of Rev. Proc. 2003–34 to waive the pre[insert the first day of the first taxable year for which the acquired member (or members) was a member of the taxpayer's consolidated group (acquiring group)] extended carryback period for the consolidated NOLs attributable to [insert name and employer identification number of acquired member (or members)] for the [short period]."; or

"SPECIAL ELECTION TO WAIVE ENTIRE PRE-ACQUISITION CARRYBACK PERIOD. This is an election under section 5.04 of Rev. Proc. 2003–34 to waive the pre[insert the first day of the first taxable year for which the acquired member (or members) was a member of the taxpayer's consolidated group (acquiring group)] carryback period for the consolidated NOLs attributable to [insert name and employer identification number of acquired member (or members)] for the [short period]."

(b) *Where to file*. A taxpayer electing to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition must file the appropriate statement(s) with the Director, Internal Revenue Service Center, Attention: ENTITY CONTROL, where the taxpayer files its federal income tax return. No copies of any statements are required to be sent to the National Office.

(c) *Statements not claims for refunds*. The statements described in section 6.01(3)(a) do not constitute claims for refund or applications for tentative refunds. A taxpayer electing to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition by filing a statement in compliance with the procedures of this section 6.01 must additionally file a claim for refund or application for tentative refund within the periods prescribed by statute to carry back any short period NOL or CL. The taxpayer must attach a copy of the statement filed under these procedures to any claim for refund or application for tentative refund filed as a result of the making of an election under this revenue procedure.

.02 *Election Constitutes Taxpayer's Agreement*. An election made in accordance with this section constitutes an agreement between the taxpayer and the Service to modify the terms and conditions for the Commissioner's approval of the taxpayer's change in annual accounting period. An election to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition does not revoke a valid election described in § 172(b)(3), Reg. § 1.1502–21(b)(3)(ii)(B) or Reg. § 1.1502–21T.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–37 and Rev. Proc. 2002–39 are modified.

SECTION 8. EFFECTIVE DATES AND TRANSITION RULE

.01 *Applications Filed Under Rev. Proc. 2002–37*. For a taxpayer within the scope of Rev. Proc. 2002–37:

(1) *In general*. This revenue procedure is effective for all changes in annual accounting periods for which the first effective year (as defined in section 5.07 of Rev. Proc. 2002–37) ends on or after April 8, 2003; and

(2) *Transition rule.* If the first effective year (as defined in section 5.07 of Rev. Proc. 2002–37) ends before April 8, 2003, and the time for filing Form 1128 with respect to that first effective year expires on or after April 8, 2003, (whether or not a Form 1128 was filed before that date with the Service Center), a taxpayer may elect to use one of the optional carryback terms and conditions of section 5 of this revenue procedure by following the procedures of section 6 of this revenue procedure.

.02 *Applications Filed Under Rev. Proc. 2002–39*. For a taxpayer within the scope of Rev. Proc. 2002–39:

(1) *In general*. This revenue procedure is effective for applications filed on or after April 8, 2003; and

(2) *Transition rule*. If a taxpayer filed an application to change the taxpayer's annual accounting period before April 8, 2003, and the application is pending with the national office on April 8, 2003, the taxpayer may request that the application be processed in accordance with this revenue procedure. However, the national office will process applications filed before April 8, 2003, in accordance with prior authority unless, prior to the later of June 9, 2003, or the issuance of the letter ruling granting or denying consent to the adoption, change, or retention, the taxpayer notifies the national office that the taxpayer desires that the taxpayer's application be processed in accordance with this revenue procedure.

.03 *Taxpayers With Prior Accounting Period Changes*. For a taxpayer described in section 3.02 of this revenue procedure, this revenue procedure is effective for changes in the taxpayer's annual accounting period if the short period necessary to effect the change began on or after February 1, 2000.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Roy A. Hirschhorn and Michael Schmit of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Hirschhorn or Mr. Schmit at (202) 622–4960 (not a toll-free call).

Industry Issue Resolution Program

Rev. Proc. 2003–36

SECTION 1. PURPOSE

This revenue procedure describes procedures for business taxpayers, industry associations, and other interested parties to submit issues for consideration under the Internal Revenue Service's Industry Issue Resolution (IIR) Program. The objective of

the IIR Program is to identify frequently disputed or burdensome tax issues that are common to a significant number of business taxpayers that may be resolved through published or other administrative guidance. Resolving issues through prefiling guidance rather than postfiling examination is a goal of the Internal Revenue Service and the Office of Chief Counsel. The Large and Mid-Size Business Division and the Small Business and Self Employed Division of the Service share operational responsibility for the IIR Program.

SECTION 2. BACKGROUND

In Notice 2000–65, 2000–2 C.B. 599, the Service announced the Industry Issue Resolution Pilot Program. The objective of the pilot program was to establish a procedure to address frequently disputed tax issues that are common to a significant number of large or mid-size business taxpayers through prefiling guidance rather than postfiling examination. After evaluating the success of the pilot program, the Service announced in Notice 2002–20, 2002–1 C.B. 796, that the IIR Program would be made permanent. In addition, Notice 2002–20 expanded the IIR Program to address issues common to small businesses, as well as large and mid-size businesses, and to address opportunities to reduce burden for all business taxpayers.

SECTION 3. SCOPE

.01 *Issues appropriate for the program.*

The issues most appropriate for consideration under the IIR Program generally will have two or more of the following characteristics:

(1) The proper tax treatment of a common factual situation is uncertain.

(2) The uncertainty results in frequent, and often repetitive, examinations of the same issue.

(3) The uncertainty results in taxpayer burden.

(4) The issue is significant and impacts a large number of taxpayers, either within an industry or across industry lines.

(5) The issue requires extensive factual development, and an understanding of industry practices and views concerning the issue would assist the Service in determining the proper tax treatment.

.02 *Issues not appropriate for the program.*

The following issues are not appropriate for consideration under the IIR Program:

(1) Issues that are unique to one or a small number of taxpayers.

(2) Issues that are primarily under the jurisdiction of Operating Divisions of the Service other than the LMSB and SB/SE Divisions.

(3) Issues that involve transactions that lack a *bona fide* business purpose, or transactions with a significant purpose of improperly reducing or avoiding federal taxes.

(4) Issues that involve transfer pricing or international tax treaties.

SECTION 4. RECOMMENDATION AND SELECTION PROCESS

.01 *Recommendation process.*

The LMSB and SB/SE Divisions will review and evaluate the issues submitted under the IIR Program and, if appropriate, may recommend that an issue be included on the Treasury Department's and the Service's Guidance Priority List for the upcoming year or on periodic updates to the Guidance Priority List. The Guidance Priority List sets forth the published guidance that the Service expects to issue during the plan year. Inclusion of an IIR item on the Guidance Priority List does not, however, guarantee that the Service will issue published guidance on the item.

Interested parties may submit issues at any time during the year. The LMSB and SB/SE Divisions will review and evaluate the issues submitted under the IIR Program at least semi-annually, generally after March 31 and August 31 of each year. Additionally, the LMSB and SB/SE Divisions will review issues submitted by May 15, 2003, to determine whether to recommend those issues for inclusion on the 2003–2004 Guidance Priority List.

.02 *Selection process.*

A recommendation under this revenue procedure does not guarantee that the issue will be selected for inclusion on the Guidance Priority List or included on a periodic update of the Guidance Priority List. In deciding whether to include issues recommended by the LMSB Division or SB/SE Division under this revenue procedure for inclusion on the Guidance Priority List, the Office of Chief Counsel and the Treasury Department will consider, among other things, recommendations from other sources, and whether the requested guidance promotes sound tax administration.

An LMSB or SB/SE representative will notify the submitter when a decision has been made whether to include an issue on the Guidance Priority List or on a periodic update. A public announcement on the issues reviewed under the IIR Program and selected for the Guidance Priority List or a periodic update will be issued at least annually. The announcement will include the name of the officials to contact for information regarding the selected issues.

SECTION 5. GUIDANCE FOR SELECTED ISSUES

Guidance on selected issues may be in the form of published guidance, such as a regulation, revenue ruling, revenue procedure, or notice, prepared by the appropriate Office of the Associate Chief Counsel. In some situations, the guidance may require taxpayers to file a request for a change in method of accounting before changing the manner in which they treat the issue. Published guidance issued under the IIR Program is available on the Digital Daily at *www.irs.gov.* Selected issues also may be addressed in administrative guidance, such as an Internal Revenue Manual provision.

SECTION 6. ADDITIONAL INFORMATION ABOUT THE IIR PROGRAM

.01 *IIR team.*

If an issue submitted under the IIR Program is selected as a published guidance project, the Service will establish a team (the IIR team) to provide assistance in analyzing the issue. IIR team members will include appropriate personnel from the LMSB and SB/SE Divisions, Appeals, the Office of Chief Counsel, and the Treasury Department.

.02 *Requests for information or meeting.*

An IIR team may request that the submitter or other business taxpayers voluntarily meet with the Service, provide information, or provide an opportunity for the Service to review books and records to assist in the development of the issue. These activities are not for the purpose of examination or inspection within the meaning of section 7605(b).

.03 *Disclosure of information.*

The Service encourages interested parties to submit information that will assist the Service and the Treasury Department in reaching an appropriate resolution of the issue. Submissions and any additional information provided may be subject to disclosure under the Freedom of Information Act. All submissions made under the IIR Program will be made available for public inspection and copying in their entirety. Therefore, submissions should not include confidential or taxpayer specific information.

SECTION 7. SUBMITTING ISSUES UNDER THE PROGRAM

.01 *No required format.*

An issue submitted for consideration under the IIR Program is not required to be submitted in a particular format. The submission should, however, include an issue statement, a description of why the issue is appropriate for the IIR Program, an explanation of the need for guidance, the estimated number of taxpayers affected by the issue, and the name and telephone number of a person to contact if additional information is needed. The submission may also include a recommendation as to how the issue may be resolved.

.02 *Where to submit issues.*

Interested parties should submit issues by e-mail to *IIR@irs.gov.* Alternatively, submissions may be mailed or faxed to:

Internal Revenue Service
Office of Prefiling and Technical Services
Large and Mid-Size Business Division LM:PFT
Mint Building 3rd Floor M3–420
1111 Constitution Avenue, NW
Washington, DC 20224
Fax: 202–283–8406

SECTION 8. EFFECT ON OTHER DOCUMENTS

This revenue procedure supersedes Notice 2002–20.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective April 17, 2003.

SECTION 10. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1837.

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

The collections of information in this revenue procedure are in Sections 6 and 7. This information is required to submit a request for the Service to consider an issue under the IIR Program. This information will be used to enable the Service to determine whether the issue is suitable for determination under the IIR Program. The collections of information are voluntary to obtain a benefit. The likely respondents are business or other for profit institutions.

The estimated total annual reporting burden is 2,000 hours.

The estimated annual burden per respondent varies from 4 hours to 200 hours, depending on individual circumstances, with an estimated average of 40 hours. The estimated number of respondents is 50.

The estimated annual frequency of responses is on occasion.

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

SECTION 11. CONTACT INFORMATION

The principal author of this revenue procedure is Donna Welch of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. Ms. Welch may be contacted at (202) 622–4910 (not a toll-free number). For information regarding the IIR Program, please contact Susan Blake, Senior Program Analyst, of the LMSB Prefiling and Technical Services Office at (202) 283–8414 (not a toll-free number) between the hours of 9:00 AM – 5:00 PM, Eastern Time, Monday through Friday.

Part IV. Items of General Interest

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

Announcement 2003–26

The name of an organization that no longer qualifies as an organization described in section 170(c)(2) of the Internal Revenue Code of 1986 is listed below.

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 October 28, 2002, 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.

Clinica Materno Infantil Plaza 3030, Inc.
Hollywood, FL

Section 7428(c) Validation of Certain Contributions Made During Pendency of Declaratory Judgment Proceedings

Announcement 2003–27

This announcement serves notice to potential donors that the organization listed below has recently filed a timely declaratory judgment suit under section 7428 of the Code, challenging revocation of its status as an eligible donee under section 170(c)(2).

Protection under section 7428(c) of the Code begins on the date that the notice of revocation is published in the Internal Revenue Bulletin and ends on the date on which a court first determines that an organization is not described in section 170(c)(2), as more particularly set forth in section 7428(c)(1). In the case of individual contributors, the maximum amount of contributions protected during this period is limited to $1,000.00, with a husband and wife being treated as one contributor. This protection is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for the revocation. This protection also applies (but without limitation as to amount) to organizations described in section 170(c)(2) which are exempt from tax under section 501(a). If the organization ultimately prevails in its declaratory judgment suit, deductibility of contributions would be subject to the normal limitations set forth under section 170.

Clinica Materno Infantil Plaza 3030, Inc.
Hollywood, FL

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
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SPR	Statement of Procedural Rules
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