

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2000-18, page 847.

Recapture of gain on disposition of qualified replacement property. The transfer of qualified replacement property to a partnership in exchange for a partnership interest by a taxpayer that has elected to defer the recognition of gain under section 1042(a) of the Code is a disposition of the qualified replacement property resulting in recapture of the deferred gain under section 1042(e).

Rev. Rul. 2000-19, page 849.

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for April 2000.

Notice 2000-20, page 851.

Request for comments on the revision of proposed section 987 regulations. This notice discusses the application

of general tax principles to certain abuses regarding foreign currency losses under section 987 of the Code and announces a prospective regulatory change to the anti-abuse rule in the proposed regulations.

Announcement 2000-24, page 855.

This announcement contains corrections to T.D. 8834 (1999-34 I.R.B. 251) relating to the treatment of distributions to foreign persons.

ESTATE AND GIFT TAX

Announcement 2000-25, page 855.

This announcement contains corrections to T.D. 8819 (1999-20 I.R.B. 5) relating to the use of actuarial tables in valuing annuities, interests for life or terms of years, and remainder or reversionary interests.

Finding Lists begin on page ii.
Index for January through March begins on page iv.



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

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Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2000. See Rev. Rul. 2000-19, page 849.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2000. See Rev. Rul. 2000-19, page 849.

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

The adjusted applicable federal long-term rate is set forth for the month of April 2000. See Rev. Rul. 2000-19, page 849.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2000. See Rev. Rul. 2000-19, page 849.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2000. See Rev. Rul. 2000-19, page 849.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2000. See Rev. Rul. 2000-19, page 849.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2000. See Rev. Rul. 2000-19, page 849.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2000. See Rev. Rul. 2000-19, page 849.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2000. See Rev. Rul. 2000-19, page 849.

Section 721.—Nonrecognition of Gain or Loss on Contribution

If qualified replacement property is transferred to a partnership in exchange for a partnership interest by a taxpayer that has elected to defer the recognition of gain under section 1042(a) of the Code, is the transfer a disposition of the qualified replacement property resulting in recapture of the deferred gain under section 1042(e) or do the nonrecognition provisions of section 721 apply? See Rev. Rul. 2000-18, on this page.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2000. See Rev. Rul. 2000-19, page 849.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2000. See Rev. Rul. 2000-19, page 849.

Section 1042(e).—Recapture of Gain on Disposition of Qualified Replacement Property

(Also section 721)

Recapture of gain on disposition of qualified replacement property. This ruling holds that the transfer of qualified replacement property to a partnership in exchange for a partnership interest by a taxpayer that has elected to defer the recognition of gain under section 1042(a) of the Code is a disposition of the quali-

fied replacement property resulting in recapture of the deferred gain under section 1042(e).

Rev. Rul. 2000-18

ISSUE

Whether the transfer of qualified replacement property to a partnership in exchange for a partnership interest by a taxpayer that has elected to defer the recognition of gain under section 1042(a) of the Internal Revenue Code is a disposition of the qualified replacement property resulting in recapture of the deferred gain under section 1042(e).

FACTS

The taxpayer is a shareholder of Company A, a closely held domestic C corporation. Company A maintains an employee stock ownership plan (ESOP) that satisfies the requirements of section 4975(e)(7). Company A has one class of common stock that constitutes employer securities within the meaning of section 409(l) of the Code. The taxpayer did not receive the shares in a distribution from a plan described in section 401(a), or a transfer pursuant to an option or other right to acquire stock to which section 83, 422 or 423 applied. The taxpayer sells all of the Company A shares to the Company A ESOP and reinvests the proceeds of the sale in qualified replacement property (QRP), as defined in section 1042(c)(4), within 12 months of the date of the sale. The taxpayer makes a timely election under section 1042(a) to defer recognition of the gain realized from the sale of the qualified securities to the ESOP. Under section 1042(d), the basis of the QRP is reduced to reflect the deferred gain on the sale. After the section 1042 election, the taxpayer contributes the QRP to a partnership in exchange for an interest in the partnership.

LAW AND ANALYSIS

Section 1042(a) provides that a taxpayer or executor may elect in certain cases not to recognize long-term capital gain on the sale of "qualified securities" to an employee stock ownership plan (as

defined in section 4975(e)(7)) or eligible worker-owned cooperative if the taxpayer purchases “qualified replacement property” (as defined in section 1042(c)(4)) within the replacement period of section 1042(c)(3) and the requirements of section 1042(b) and section 1.1042-1T of the Temporary Income Tax Regulations are satisfied.

A sale of “qualified securities” meets the requirements of section 1042(b) if: (1) the qualified securities are sold to an employee stock ownership plan (as defined in section 4975(e)(7)) or an eligible worker-owned cooperative; (2) the plan or cooperative owns (after application of 318(a)(4)), immediately after the sale, at least 30 percent of (a) each class of outstanding stock of the corporation (other than stock described in section 1504(a)(4)) which issued the securities or (b) the total value of all outstanding stock of the corporation (other than stock described in section 1504(a)(4)); (3) the taxpayer files with the Secretary a verified written statement of the employer whose employees are covered by the employee stock ownership plan or an authorized officer of the cooperative consenting to the application of sections 4978 and 4979A with respect to such employer or cooperative; and (4) the taxpayer’s holding period with respect to the qualified securities is at least three years (determined as of the time of the sale).

Section 1042(c)(1) provides that qualified securities are employer securities (as defined in section 409(l)) which are issued by a domestic C corporation that has no stock outstanding that is readily tradable on an established securities market and were not received by the taxpayer in a distribution from a plan described in section 401(a) or a transfer pursuant to an option or other right to acquire stock to which section 83, 422, or 423 applied (or to which section 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied).

The taxpayer must purchase “qualified replacement property” within the “replacement period” which is defined in section 1042(c)(3) as the period which begins 3 months before the date on which the sale of qualified securities occurs and which ends 12 months after the date of such sale.

Section 1042(c)(4)(A) defines “qualified replacement property” as any security issued by a domestic “operating corporation” (as defined in section 1042(c)(4)(B)) which did not, for the taxable year preceding the taxable year in which such security was purchased, have passive investment income (as defined in section 1362(d)(3)(C)) in excess of 25 percent of the gross receipts of such corporation for such preceding taxable year and is not the corporation which issued the qualified securities that such security is replacing or a member of the same controlled group of corporations (within the meaning of section 1563(a)(1)) as such corporation.

Section 1042(d) provides that the basis of the taxpayer in qualified replacement property purchased by the taxpayer during the replacement period is reduced by the amount of gain not recognized by reason of such purchase and the application of section 1042(a). If more than one item of qualified replacement property is purchased, the basis of each of such items is reduced by an amount determined by multiplying the total gain not recognized by reason of such purchase and the application of subsection (a) by a fraction the numerator of which is the cost of such item of property and the denominator of which is the total cost of all such items of property.

Section 1042(e)(1) states that “[i]f a taxpayer disposes of any qualified replacement property, then, notwithstanding any other provision of this title, gain (if any) shall be recognized to the extent of the gain which was not recognized under subsection (a) by reason of the acquisition by such taxpayer of such qualified replacement property.”

The legislative history of section 1042(e) indicates that section 1042(e) was added to coordinate the requirement that deferred gain be recognized on the disposition of any qualified replacement property with other nonrecognition provisions of the Code. “Effective for dispositions made after the date of enactment, the Act overrides all other provisions permitting nonrecognition and requires that gain realized upon the disposition of qualified replacement property be recognized at that time.” S. Rep. 99-313, 99th Cong., 2nd Sess., 1032 (1986), 1986-3 C.B., v. 3, 1032. Thus, gain realized from the dispo-

sition of any qualified replacement property by a taxpayer who made an election under section 1042 must be recognized at the time of the disposition regardless of any other nonrecognition provisions of the Code that may otherwise be applicable.

Section 721(a) provides that generally no gain or loss is recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

Limited exceptions to the rule of section 1042(e)(1) are provided in section 1042(e)(3) which provides that the recapture rules of section 1042(e)(1) do not apply to any transfer of qualified replacement property that occurs: (1) in any reorganization (within the meaning of section 368) unless the person making the election under section 1042(a)(1) owns stock representing control of the acquiring or acquired corporation and such property is substituted basis property in the hands of the transferee; (2) by reason of the death of the person making the election; (3) by gift; or (4) in any transaction to which section 1042(a) applies.

The contribution of qualified replacement property to a partnership in exchange for an interest in the partnership is not a transfer of qualified replacement property described in any of the exceptions in section 1042(e)(3).

In the present situation, the taxpayer disposed of qualified replacement property by contributing it to a partnership in exchange for an interest in the partnership. Therefore, although a contribution of property to a partnership in exchange for an interest in the partnership is ordinarily a nonrecognition event under section 721, section 1042(e)(1) requires that any gain realized on the contribution be recognized to the extent of the gain that was deferred under section 1042(a).

HOLDING

The transfer of qualified replacement property to a partnership in exchange for a partnership interest by a taxpayer that has elected to defer the recognition of gain under section 1042(a) is a disposition of the qualified replacement property under section 1042(e). Accordingly, under section 1042(e), any gain realized on the disposition is required to be rec-

ognized by the taxpayer at the time of the transfer to the extent of the gain that was not recognized under section 1042(a) by reason of the acquisition by the taxpayer of the qualified replacement property.

EFFECT ON OTHER REVENUE RULING(S): N/A

PROSPECTIVE APPLICATION: N/A

DRAFTING INFORMATION

The principal author of this revenue ruling is John Ricotta of the Associate Chief Counsel (Employee Benefits & Exempt Organizations) (CC:EBEO:Br5). For further information regarding this revenue ruling contact John Ricotta on (202) 622-4290 (not a toll-free call).

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

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

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for April 2000.

Rev. Rul. 2000-19

This revenue ruling provides various prescribed rates for federal income tax purposes for April 2000 (the current month.) Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for

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

REV. RUL. 2000-19 TABLE 1
Applicable Federal Rates (AFR) for April 2000

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	6.46%	6.36%	6.31%	6.28%
110% AFR	7.12%	7.00%	6.94%	6.90%
120% AFR	7.78%	7.63%	7.56%	7.51%
130% AFR	8.44%	8.27%	8.19%	8.13%
<i>Mid-Term</i>				
AFR	6.71%	6.60%	6.55%	6.51%
110% AFR	7.39%	7.26%	7.20%	7.15%
120% AFR	8.08%	7.92%	7.84%	7.79%
130% AFR	8.76%	8.58%	8.49%	8.43%
150% AFR	10.15%	9.90%	9.78%	9.70%
175% AFR	11.88%	11.55%	11.39%	11.28%
<i>Long-Term</i>				
AFR	6.49%	6.39%	6.34%	6.31%
110% AFR	7.15%	7.03%	6.97%	6.93%
120% AFR	7.82%	7.67%	7.60%	7.55%
130% AFR	8.48%	8.31%	8.23%	8.17%

REV. RUL. 2000-19 TABLE 2
Adjusted AFR for April 2000

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	4.39%	4.34%	4.32%	4.30%
Mid-term adjusted AFR	5.00%	4.94%	4.91%	4.89%
Long-term adjusted AFR	5.75%	5.67%	5.63%	5.60%

REV. RUL. 2000–19 TABLE 3
Rates Under Section 382 for April 2000

Adjusted federal long-term rate for the current month	5.75%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	5.84%

REV. RUL. 2000–19 TABLE 4
Appropriate Percentages Under Section 42(b)(2)
for April 2000

Appropriate percentage for the 70% present value low-income housing credit	8.55%
Appropriate percentage for the 30% present value low-income housing credit	3.66%

REV. RUL. 2000–19 TABLE 5
Rate Under Section 7520 for April 2000

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	8.0%
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Section 1288.—Treatment of Original Issue Discounts on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2000. See Rev. Rul. 2000–19, page 849.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2000. See Rev. Rul. 2000–19, page 849.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2000. See Rev. Rul. 2000–19, page 849.

Part III. Administrative, Procedural, and Miscellaneous

Request for Comments on the Revision of Proposed Section 987 Regulations

Notice 2000-20

Treasury and the IRS plan to review and possibly replace the proposed regulations issued under section 987 of the Internal Revenue Code of 1986. The current proposed regulations provide rules for determining the timing, source, character, and amount of foreign currency gain or loss recognized with respect to a qualified business unit (QBU) with a functional currency different from that of the taxpayer (*i.e.*, different from that of the taxpayer's home office) if the QBU does not use the dollar approximate separate transactions method of accounting. Treasury and the IRS are concerned that the proposed regulations may not have fully achieved their original goal of providing rules that are administrable and result in the recognition of foreign currency gains and losses under the appropriate circumstances. Accordingly, Treasury and the IRS request comments concerning issues that should be addressed in revised regulations under section 987.

Further, Treasury and the IRS are concerned about certain abusive transactions designed to create an inappropriate acceleration of foreign currency losses under section 987. These abusive transactions may involve a circular flow of funds between a foreign QBU and its U.S. parent. Treasury and the IRS intend to challenge these transactions under general tax principles and to issue regulations to prevent these abuses.

I. BACKGROUND

Treasury and the IRS published proposed regulations under section 987 on September 25, 1991. The proposed regulations provide rules for determining the timing, source, character, and amount of foreign currency gain or loss recognized with respect to a QBU branch (as defined in Prop. Treas. Reg. §1.987-1(a)(2)) that has a functional currency different from that of the taxpayer. The proposed regulations adopt the profit and loss method of computing foreign currency gain or loss

for purposes of section 987. Prop. Treas. Reg. § 1.987-1(b)(1).

Prop. Treas. Reg. §1.987-2(a)(1) provides that a taxpayer applying this profit or loss method recognizes gain or loss under section 987 upon a remittance (as defined in Prop. Treas. Reg. §1.987-2(b)(4)) from the QBU branch or upon the QBU branch's termination. Prop. Treas. Reg. §1.987-2(a)(2) provides an anti-abuse rule with respect to contributions to (or distributions from) a QBU branch that do not have a significant business purpose.

Prop. Treas. Reg. §1.987-2(b)(4) provides that the term "remittance" means the amount of any transfer (as defined below) from a QBU branch to the taxpayer to the extent that the aggregate amount of such transfers during the taxable year does not exceed the positive year-end balance of the equity pool as determined in Prop. Treas. Reg. §1.987-2(c)(1) (without regard to the decreases described in Prop. Treas. Reg. §1.987-2(c)(1)(iii)(B)). Prop. Treas. Reg. §1.987-2(b)(2) provides, in part, that the term "transfer" means the amount of property that, on any day, either is distributed from a QBU branch to the taxpayer (or to another QBU branch of the taxpayer) or is contributed by the taxpayer (or another QBU branch of the taxpayer) to the QBU branch. If contributions to the QBU branch from the taxpayer occur on the same day as distributions from the QBU branch to the taxpayer, these contributions and distributions are netted against one another, and only the net amount is treated as a transfer to (or from) the QBU branch. This rule is generally referred to as the "daily netting rule."

Section 987 gain or loss equals the difference between a remittance, translated into the taxpayer's functional currency using the spot rate at the date of the remittance, and the portion of the basis pool, determined under Prop. Treas. Reg. §1.987-2(c)(2), attributable to the remittance. Prop. Treas. Reg. § 1.987-2(d)(1).

II. REQUEST FOR COMMENTS ON THE PROPOSED SECTION 987 REGULATIONS

As noted above, Treasury and the IRS

are currently reviewing the proposed section 987 regulations to determine if such regulations are administrable and provide rules that call for the appropriate recognition of foreign currency gain or loss. Accordingly, Treasury and the IRS request comments on the application of section 987 generally and on the interaction of section 987 with other provisions of the Code, particularly with respect to the issues outlined below. With respect to any comments submitted under this notice, Treasury and the IRS request explanations of the extent to which the taxpayer's comments would differ depending on the type of QBU at issue, *e.g.*, a QBU that constitutes a branch, partnership, or trust.

A. Treatment of Contributions and Distributions of Capital to or from a QBU Branch Under Section 987

Treasury and the IRS are reevaluating the treatment under section 987 of contributions of capital to, and distributions of capital from, a QBU branch. Under the proposed section 987 regulations, the equity pool includes contributions of property to a QBU branch. Further, distributions of property from the QBU branch are treated as transfers that may constitute remittances and thus may trigger currency gain or loss, even if the property consists of tangible property previously contributed to the QBU branch (or acquired with funds previously contributed to the QBU branch), whose value is not affected by exchange rate fluctuations.

An approach different from the proposed regulations might compute currency gain and loss only on remittances of earnings, rather than taking remittances of capital into account. In most cases, this approach would align section 987 principles more closely with the principles of section 986(c). Treasury and the IRS request comments regarding the adoption of such an approach in the section 987 regulations, including comments on the use of a stacking or other rule to determine the extent to which remittances are attributable to earnings. Treasury and the IRS are also considering whether it might be appropriate to maintain a historic dollar basis in certain tangible assets for purposes of adjusting the equity and basis pools in lieu of calculating exchange gain or loss. Treasury and the IRS also request

comments regarding whether special rules should apply to assets the value of which is significantly affected by exchange rate fluctuations or to taxpayers who hold significant amounts of such assets in the ordinary course of their trade or business.

B. Definitions of Transfer and Remittance

1. Use of an Annual Netting Convention

Treasury and the IRS are considering providing detailed guidance on the definition of the term “transfer.” For example, Treasury and the IRS are considering an annual netting rule to determine the existence and amount of a transfer. Under this rule, a transfer to or from any QBU branch would consist of the net amount of property that, in any taxable year of the taxpayer, either is distributed from the QBU branch to the taxpayer (or to any other QBU branch of the same taxpayer) or is contributed by the taxpayer (or by any other QBU branch of the taxpayer) to the QBU branch. In comparison with the proposed regulations, this approach would be closer to the approach used in section 884 to determine the “dividend equivalent amount” of a U.S. branch of a foreign corporation. Treasury and the IRS expect that an annual netting rule would benefit taxpayers by decreasing the administrative burden associated with calculating the amount of a transfer. If an annual netting rule were adopted, the regulations might also provide that, for purposes of determining the existence or amount of any transfer, the IRS could disregard any distribution or contribution in appropriate circumstances to the extent that such conveyance is offset by either a distribution or a contribution (whether or not to or from the same QBU branch that was a party to the original distribution or contribution) made within 30 days (or other designated period) of the last day of the taxpayer’s taxable year.

As discussed in Part III, Treasury and the IRS are concerned that the daily netting rule in the definition of “transfer” in Prop. Treas. Reg. § 1.987-2(b)(2) is susceptible to manipulation by taxpayers and question whether it should be retained. Accordingly, Treasury and the IRS request comments regarding whether the daily netting rule yields a sufficiently accurate measurement of transfers during the taxable year, whether such a rule is

conceptually consistent with the regime applied to controlled foreign corporations under section 986, whether the rule is administratively burdensome for taxpayers, and whether the rule can be retained without giving rise to abuse.

2. Transfers Between QBU Branches

Under the proposed section 987 regulations, a property conveyance between two QBU branches of the taxpayer receives the same treatment as a property conveyance from a QBU branch to its home office. Comments are requested regarding whether it is appropriate to treat a property transfer between such QBU branches as a transfer from the distributing QBU branch to the home office, followed by a contribution of the same property from the home office to the recipient QBU branch. These comments should consider whether different results would be appropriate depending on the type of transaction, on whether the QBU branches share the same functional currency, or otherwise.

C. Types of Property Whose Distribution Can Constitute a Transfer

Under the proposed section 987 regulations, the term “transfer” includes the net amount of any property distributed by a QBU branch. Treasury and the IRS seek comments with respect to whether distributions of certain classes of property (e.g., inventory or other property normally transferred between the home office and the QBU branch in the ordinary course of business) should be distinguished from distributions of property more in the nature of a repatriation of earnings or capital and, if so, how such a distinction might be applied to prevent manipulation of section 987.

D. Interaction Between Section 987 Regulations and the Partnership Rules

Because a partnership is a QBU of each partner (under Treas. Reg. § 1.989(a)-1(b)(2)(i)), the notice of proposed rulemaking requested comments on the manner in which section 987 could be better coordinated with Subchapter K. Only one comment was received in response to this request. Due to the implementation of the “check-the-box” rules under Treas. Reg. § 301.7701-3, Treasury and the IRS expect increased taxpayer use of partnerships and disregarded entities, leading to increased interest in the interaction of the partnership and section 987

regimes. In addition to general comments on the interaction of section 987 and Subchapter K, Treasury and the IRS invite comments on the interaction of section 987 with the rules relating to actual and deemed partnership distributions and transfers of interests in partnerships. For example, as noted in the notice of proposed rulemaking, it is anticipated that section 987 will operate independently from the general rules in Subchapter K. Accordingly, although no gain or loss on a partnership distribution may be recognized under section 731, a partnership distribution (remittance) may give rise to currency gain or loss under section 987.

Additionally, the proposed regulations under section 987 provide for the recognition of currency gain or loss on the termination of a QBU branch. However, the proposed regulations reserve on the appropriate treatment of a termination of a QBU that is classified as a partnership. See Prop. Treas. Reg. § 1.987-3(e). Treasury and the IRS request comments addressing whether section 987 gain or loss should be triggered by reason of a partnership termination under section 708(b), including terminations under Treas. Reg. § 1.708-1(b)(1)(ii) (relating to termination due to the sale or exchange of a fifty percent or greater interest in the partnership). Moreover, Treasury and the IRS are examining whether currency gain or loss recognition under section 987 is appropriate where a partner terminates its interest in a partnership by reason of a sale or exchange of its partnership interest to a third party, rather than having its interest redeemed by the partnership.

Finally, comments are requested regarding the approach the section 987 regulations should take with respect to tiered partnerships and other tiered arrangements.

E. Interaction with Financial Accounting Rules

Financial accounting rules addressing the reporting of foreign currency gain or loss with respect to branches under FAS No. 52 differ materially from the statutory rules enacted by Congress in section 987. While these rules cannot be perfectly aligned, Treasury and the IRS request comments on whether, and the manner in which, the regulations should be more closely harmonized with financial accounting principles, either for policy rea-

sons or to reduce the administrative burden of complying with the regulations.

F. Section 351 Transactions and Related Issues

The proposed regulations treat the transfer of a QBU branch's assets in a section 351 transaction described in section 367(a) as a QBU branch termination. See Prop. Treas. Reg. § 1.987-3(c)(1). The regulations, however, reserve on providing guidance on other types of section 351 transactions. See Prop. Treas. Reg. § 1.987-3(c)(2). Treasury and the IRS request comments on examples of QBU branch asset transfers in section 351 transactions that should not be treated as QBU branch terminations. One such example might include the transfer of a QBU branch's assets between domestic members of a U.S. consolidated group. Treasury and the IRS request comments on the most appropriate method of determining section 987 gain and loss in the context of nonrecognition transactions involving other types of entities, such as partnerships and trusts.

G. Other Issues

Treasury and the IRS also request comments regarding other major issues that should be addressed as the section 987 proposed regulations are reexamined.

III. ABUSIVE ARRANGEMENTS

A. Applicability of Current Legal Principles

Treasury and the IRS have become aware that some taxpayers argue that the rule in the proposed section 987 regulations requiring daily netting of contributions and distributions allows them to recognize foreign currency losses prematurely with respect to purported transfers that do not constitute actual economic remittances (*i.e.*, from transactions that are undertaken for tax purposes and lack meaningful non-tax economic consequences). This opportunity is present when the spot rate is less than the historical rate used to determine the amount of capital and earnings in the basis pool. In such a situation, taxpayers have attempted to use circular cash flows consisting of a transfer of property from the QBU branch to the taxpayer on one day followed closely by a transfer of property from the taxpayer to the QBU branch on another day to recognize foreign currency losses without economically affecting the net

asset position of the QBU branch.

Treasury and the IRS believe that circular cash flows and similar transactions lacking economic substance will not result in recognition of foreign currency losses under general tax principles because such transactions are not properly treated as transfers or remittances under section 987. See, *e.g.*, *ACM Partnership v. Commissioner*, 157 F.3d 231 (3d Cir. 1998), *cert. denied*, 526 U.S. 1017 (1999) (denying tax benefits from a transaction lacking economic substance); Rev. Rul. 99-14, 1999-13 I.R.B. 3 (denying tax deductions from a transaction lacking economic substance, citing, among other factors, the use of a circular flow of funds); *Erhard v. Commissioner*, 46 F.3d 1470 (9th Cir. 1995), *aff'g* T.C. Memo 1993-25, *cert. denied*, 516 U.S. 930 (1995) (denying tax benefits with respect to circular cash flow). See also Rev. Rul. 83-142, 1983-2 C.B. 68 (ignoring a circular flow of funds in determining the characterization of a transaction).

The following examples illustrate cases in which the IRS may challenge foreign currency losses under general tax principles. For purposes of these examples, assume P is a domestic corporation (with the dollar as its functional currency) that has QBU branch 1 in country X and QBU branch 2 in country Y. QBU branch 1 uses the U as its functional currency.

Example 1

On January 1 of year 5, P contributes 100u to QBU branch 1. On January 2 of year 5, QBU branch 1 distributes 50u to P. On January 4 of year 5, QBU branch 1 distributes another 50u to P. Assume the spot rate on these three days is less than the historical rate used to determine the amount of capital and earnings in the basis pool of QBU branch 1, so that a remittance would potentially result in recognition of a foreign currency loss. Further assume that the total of all transfers during the taxable year does not exceed the positive year end balance of the equity pool. Because the distributions by QBU branch 1 are offset by a contribution from P that occurred in close temporal proximity, the IRS will scrutinize this type of transaction and may disregard the contribution and distributions for purposes of section 987.

Example 2

On January 1 of year 5, QBU branch 1 distributes 100u to P. On January 4 of year 5, P contributes 100u to QBU branch 2. QBU branch 2 uses the account to which the 100u was deposited to pay the operating expenses and other costs of QBU branch 1. Assume the spot rate on January 1 of year 5 is less than the historical rate used to determine the amount of capital and earnings in the basis pool of QBU branch 1, so that a remittance would potentially result in recognition of a foreign currency loss.

Further assume that the total of all transfers from QBU branch 1 during the taxable year does not exceed the positive year end balance of the equity pool for QBU branch 1. Because QBU branch 1 continues to have use of the distributed property, the IRS will scrutinize this type of transaction and may disregard the 100u conveyance from QBU branch 1 to P for purposes of section 987.

B. Regulations to be Issued pursuant to this Notice

1. Clarification of Transfer and Remittance Definitions

Treasury and the IRS plan to issue regulations which will alter the definition of the terms "transfer" and "remittance" to clarify that transactions lacking economic substance will not be respected for purposes of recognizing currency losses on transfers between a QBU branch and its home office or between QBU branches of a single taxpayer (or related taxpayers). Circular cash flows, or any property distribution from a QBU branch followed or preceded (within a relatively short time period) by a contribution to that QBU branch or a distribution from a second QBU branch of the same taxpayer to that QBU branch, may not be treated as a transfer to the extent of the offsetting amount.

In addition, a contribution or distribution of property may be disregarded (*i.e.*, not treated as a transfer) if the unit making the contribution or distribution does not lose the use of the property for a significant period. For example, a distribution from a QBU branch to a bank account to which the QBU branch has access may be disregarded if the QBU branch retains the use or control of the property.

2. Change in Anti-Abuse Rule

Treasury and the IRS plan to modify the anti-abuse rule of Prop. Treas. Reg. § 1.987-2(a)(2) to provide that if a contribution to or a distribution from (or a series of contributions to or distributions from) a QBU branch, or a termination of a QBU branch, lacks economic substance or is otherwise inconsistent with the purposes of section 987, then the Commissioner may make appropriate adjustments to properly reflect the economic effects of the transaction or any related or concurrent transaction.

Under the regulations to be issued under this notice, the above-described change to the anti-abuse rule will apply to contributions, distributions, and terminations occurring on or after March 21,

2000. Notwithstanding the above-described change to the anti-abuse rule, economic substance case law continues to apply to periods before (as well as after) the date this change takes effect.

VI. SUBMISSION OF COMMENTS

Written comments may be submitted to the Associate Chief Counsel (International), Attention: Rebecca Rosenberg (Notice

2000–20), Room 4562, CC:Intl:Br5, Internal Revenue Service, 1111 Constitution Avenue NW, Washington DC 20224. Alternatively, taxpayers may submit comments directly to the IRS Internet site at **http://www.irs.ustreas.gov/prod/tax_regs/comments.htm**

I. Comments will be available for public inspection and copying. Treasury and the IRS request comments by June 19, 2000.

For further information regarding this notice, contact Rebecca Rosenberg of the

Office of the Associate Chief Counsel (International) at 202-622-3870 (not a toll-free call).

Part IV. Items of General Interest

Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2); Correction

Announcement 2000-24

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to T.D. 8834 (1999-34 I.R.B. 251), which were published in the **Federal Register** on Monday, August 9, 1999 (64 F.R. 43072), relating to the treatment of distributions to foreign persons under section 367(e)(1) and (2) as added to the Internal Revenue Code by the Tax Reform Act of 1986, which affects U.S. corporations.

DATES: This correction is effective August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Guy A. Bracuti, 202-622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 367(e)(1) and (2) of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8834) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8834), which was the subject of FR Doc. 99-20092, is corrected as follows:

§1.367(e)-1 [Corrected]

1. On page 43076, column 2, §1.367(e)-1(b)(2), lines 19, 20 and 21 from the bottom of the column, the language “entity (disregarded entity) under §1.7701-3(b)(1)(ii) or (b)(2)(i)(C) are” is

corrected to read “entity separate from its owner (disregarded entity) under §301.7701-3 of this chapter are”.

2. On page 43076, column 3, §1.367(e)-1(d)(1), lines 2 and 3 from the bottom of the column, the language “described in paragraph (b)(1) of this section are” is corrected to read “described in section 355 in which the distributing corporation is domestic and the controlled corporation is foreign are”.

§1.367(e)-2 [Corrected]

3. On page 43078, column 1, §1.367(e)-2(b)(1)(ii)(B)(2), lines 7, 8 and 9 from the bottom of the *Example*, the language “allocate \$45 (60 X .75) of the recognized capital loss to Asset B and will allocate the remaining \$15 (60 X .25) of” is corrected to read “allocate \$15 (60 X .25) of the recognized capital loss to Asset B and will allocate the remaining \$45 (60 X .75) of”.

4. On page 43078, column 1, §1.367(e)-2(b)(1)(ii)(C), lines 16 and 17, the language “shall not offset loss” is corrected to read “shall not be offset by a loss”.

5. On page 43081, column 1, §1.367(e)-2(b)(2)(iii)(A)(2), line 2, the language “(directly)” is corrected to read “(directly and without regard to paragraph (b)(1)(iii) of this section)”.

6. On page 43081, column 1, §1.367(e)-2(b)(2)(iii)(A)(3), line 2, the language “(directly)” is corrected to read “(directly and without regard to paragraph (b)(1)(iii) of this section)”.

7. On page 43081, column 1, §1.367(e)-2(b)(2)(iii)(B), lines 7 through 11, the language “(or was a U.S. real property holding corporation with respect to the foreign distributee corporation during the five year period ending on the date of liquidation)” is corrected to read “(or is a former U.S. real property holding corporation the stock of which is treated as a U.S. real property interest for five years under section 897(c)(1)(A)(ii))”.

8. On page 43081, column 1, §1.367(e)-2(b)(2)(iii)(C)(2), line 8 from the bottom of the paragraph, the language “disposes of” is corrected to read “disposes of (whether in a recognition or non-recognition transaction)”.

9. On page 43081, column 1, §1.367(e)-2(b)(2)(iii)(C)(2), the last three lines of the paragraph, the language “that a principal purpose of the liquidation was not the avoidance of U.S. tax” is corrected to read “that the avoidance of U.S. tax was not a principal purpose of the liquidation”.

10. On page 43081, column 2, §1.367(e)-2(b)(2)(iii)(D), line 10 from the bottom of the paragraph, the language “to such stock” is corrected to read “to the distributed stock”.

11. On page 43081, column 2, §1.367(e)-2(b)(3)(i), the last sentence of the paragraph is removed.

12. On page 43081, column 3, §1.367(e)-2(c)(2)(i)(A), line 7, the language “gain on the” is corrected to read “gain (or loss in accordance with principles contained in paragraph (b)(1)(ii) of this section) on the”.

13. On page 43082, column 2, §1.367(e)-2(c)(3)(i), the last sentence of the paragraph is removed.

14. On page 43082, column 2, §1.367(e)-2(e), lines 2 and 3, the language “occurring 30 days after August 9, 1999 or” is corrected to read “occurring on or after September 7, 1999 or”.

Dale D. Goode,
*Federal Register Liaison,
Assistant Chief Counsel (Corporate).*

Use of Actuarial Tables in Valuing Annuities, Interests for Life or Term of Years, and Remainder or Reversionary Interests; Correction

Announcement 2000-25

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction of final and temporary regulations.

SUMMARY: This document contains corrections to T.D. 8819 (1999-20 I.R.B. 5) which were published in the **Federal Register** on Friday, April 30, 1999 (64 F.R. 23187), relating to the use of actuarial tables in valuing annuities, interests

for life or terms of years, and remainder or reversionary interests.

DATES: This correction is effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett at (202) 622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject of these corrections are under section 7520 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8819) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8819), which were the subject of FR Doc. 99-10533, is corrected as follows:

§1.664-2 [Corrected]

1. On page 23229, in the table in amendatory instruction Par. 32, the entry for 1.664-2(c) is corrected to read as follows:

Dale D. Goode,
*Federal Register Liaison,
Assistant Chief Counsel (Corporate).*

Section	Remove	Add
* * * * *		
1.664-2(c), sixth sentence	April 30, 1989	April 30, 1999
* * * * *		

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of 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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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1999–27 through 1999–52 is in Internal Revenue Bulletin 2000–1, dated January 3, 2000.

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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
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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