

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. 2008-54, page 1352.

Interest rates; underpayments and overpayments. The rates of interest determined under section 6621 of the Code for the calendar quarter beginning January 1, 2009, will be 5 percent for overpayments (4 percent in the case of a corporation), 5 percent for underpayments, and 7 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 2.5 percent.

Notice 2008-115, page 1367.

This notice provides guidance to employers and payers on their reporting and wage withholding requirements for calendar year 2008 with respect to deferrals of compensation and amounts includible in gross income under section 409A of the Code. In addition, this notice provides guidance to service providers on their income tax reporting and tax payment requirements with respect to amounts includible in gross income under section 409A. Notice 2005-1 modified.

Notice 2008-116, page 1372.

This notice extends to taxable years that begin before January 1, 2009, the interim guidance provided in Notice 2008-32, 2008-11 I.R.B. 593, on the treatment under section 67 of the Code of investment advisory costs and other costs subject to the 2-percent floor under section 67(a) that are integrated as part of one commission or fee paid to the trustee or executor and are incurred by a trust other than a grantor trust or an estate. Notice 2008-32 modified and superseded.

Rev. Proc. 2008-68, page 1373.

Section 305. This procedure provides temporary guidance regarding section 305 treatment of a stock distribution by a

publicly traded real estate investment (REIT) trust in which the shareholders have an election to receive money or stock, subject to an aggregate limitation on the amount of money to be distributed.

EXEMPT ORGANIZATIONS

Announcement 2008-126, page 1375.

The IRS has revoked its determination that Peterson Family Foundation of Salt Lake City, UT; A1 Credit Counseling, Inc., of Ft. Smith, AR; Nat Turner Legal Defense Fund of Garland, TX; SOFLO Ballet, Inc., of Miramar, FL; Family Health Services, Inc., of Bellefonte, PA; Hometown Heroes Memorial Organization, Inc., of Landrum, SC; ClearADebt, Inc., of Dania, FL; Rapid Hope International of Hurst, TX; Spanish Community of Yonkers, NY; All Terrier Rescue Hunters Crossing of Aloha, OR; Women Helping Women of Houston, TX; Safe Haven Homes, Inc., of Hartland, MI; AJH Housing of St. Louis, MO; Restoration & Reconciliation Outreach, Inc., of Miami, FL; Williams Peurifoy Personal Care Home, Inc., of Philadelphia, PA; and Capital Gymnastics Booster Club, Inc., of Springfield, GA, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

TAX CONVENTIONS

Announcement 2008-124, page 1359.

This document provides a copy of the Memorandum of Understanding Between the Competent Authorities of the Federal Republic of Germany and the United States of America regarding the arbitration process set forth in the United States-Germany Income Tax Convention.

(Continued on the next page)

Finding Lists begin on page ii.
Index for July through December begins on page vi.



Announcement 2008-125, page 1363.

This document provides guidelines regarding the arbitration process set forth in the United States-Germany Income Tax Convention as amended by the Protocol signed on June 1, 2006. These guidelines relate to the Memorandum of Understanding Between the Competent Authorities of the Federal Republic of Germany and the United States of America signed on December 8, 2008.

ADMINISTRATIVE**Announcement 2008-127, page 1375.**

This document contains a correction to final and temporary regulations (T.D. 9430, 2008-48 I.R.B. 1205) relating to information returns for cancellation of indebtedness by certain entities. The regulations will avoid premature information reporting from certain businesses that are currently required to report and will reduce the number of information returns required to be filed. The regulations will impact certain lenders who are currently required to file information returns under the existing regulations.

Announcement 2008-128, page 1376.

This document contains a correction to temporary regulations (T.D. 7964, 1984-2 C.B. 263) relating to tax shelter registration. Changes to the applicable tax law were made by the Tax Reform Act of 1984. The regulations affect organizers, sellers, investors, and certain other persons associated with investments that are considered tax shelters.

The IRS Mission

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

the tax law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

Section 6621.—Determination of Rate of Interest

26 CFR 301.6621-1: Interest rate.

Interest rates; underpayments and overpayments. The rates of interest determined under section 6621 of the Code for the calendar quarter beginning January 1, 2009, will be 5 percent for overpayments (4 percent in the case of a corporation), 5 percent for underpayments, and 7 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 2.5 percent.

Rev. Rul. 2008-54

Section 6621 of the Internal Revenue Code establishes the rates for interest on tax overpayments and tax underpayments. Under section 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section 6601 on any large corporate underpayment, the underpayment rate under section 6621(a)(2) is determined by substituting “5 percentage points” for “3 percentage points.” See section 6621(c) and section 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and

for the rules for determining the applicable date. Section 6621(c) and section 301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under section 6621(b)(1) for any month applies during the first calendar quarter beginning after that month. Section 6621(b)(2)(B) provides that in determining the addition to tax under section 6654 for failure to pay estimated tax for any taxable year, the federal short-term rate that applies during the third month following the taxable year also applies during the first 15 days of the fourth month following the taxable year. Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during that month by the Secretary in accordance with section 1274(d), rounded to the nearest full percent (or, if a multiple of $\frac{1}{2}$ of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that, in determining the quarterly interest rates to be used for overpayments and underpayments of tax under section 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with section 6621 which, pursuant to section 6622, is subject to daily compounding.

The federal short-term rate determined in accordance with section 1274(d) during October 2008 is the rate published in Revenue Ruling 2008-50 to take effect beginning November 1, 2008. The fed-

eral short-term rate, rounded to the nearest full percent, based on daily compounding determined during the month of October 2008 is 2 percent. Accordingly, an overpayment rate of 5 percent (4 percent in the case of a corporation) and an underpayment rate of 5 percent are established for the calendar quarter beginning January 1, 2009. The overpayment rate for the portion of a corporate overpayment exceeding \$10,000 for the calendar quarter beginning January 1, 2009, is 2.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning January 1, 2009, is 7 percent. These rates apply to amounts bearing interest during that calendar quarter.

Under section 6621(b)(2)(B), the 5 percent rate also applies to estimated tax underpayments for the first calendar quarter in 2009 and for the first 15 days in April 2009.

Interest factors for daily compound interest for annual rates of 2.5 percent, 4 percent, 5 percent, and 7 percent are published in Tables 10, 13, 15, and 19 of Rev. Proc. 95-17, 1995-1 C.B. 556, 564, 567, 569, and 573.

Annual interest rates to be compounded daily pursuant to section 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Deborah Colbert-James of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Ms. Colbert-James at (202) 622-8143 (not a toll-free call).

TABLE OF INTEREST RATES
PERIODS BEFORE JUL. 1, 1975 — PERIODS ENDING DEC. 31, 1986
OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995-1 C.B.
		DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 — DEC. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 — DEC. 31, 1998 – Continued

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 — PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995-1 C.B.	PAGE
		TABLE	
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	7%	19	573

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 — PRESENT – Continued
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995-1 C.B. TABLE	PAGE
Apr. 1, 2006—Jun. 30, 2006	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	8%	21	575
Oct. 1, 2007—Dec. 31, 2007	8%	21	575
Jan. 1, 2008—Mar. 31, 2008	7%	67	621
Apr. 1, 2008—Jun. 30, 2008	6%	65	619
Jul. 1, 2008—Sep. 30, 2008	5%	63	617
Oct. 1, 2008—Dec. 31, 2008	6%	65	619
Jan. 1, 2009—Mar. 31, 2009	5%	15	569

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 — PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	4%	13	567	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	4%	13	567	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	4%	13	567	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	3%	11	565	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	3%	59	613	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	4%	61	615	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	3%	59	613	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	4%	61	615	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	4%	13	567	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	5%	15	569	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	5%	15	569	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	6%	17	571	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	6%	17	571	7%	19	573
Apr. 1, 2006—Jun. 30, 2006	6%	17	571	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	7%	19	573	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	7%	19	573	8%	21	575

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 — PRESENT — Continued
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 2007—Mar. 31, 2007	7%	19	573	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	7%	19	573	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	7%	19	573	8%	21	575
Oct. 1, 2007—Dec. 31, 2007	7%	19	573	8%	21	575
Jan. 1, 2008—Mar. 31, 2008	6%	65	619	7%	67	621
Apr. 1, 2008—Jun. 30, 2008	5%	63	617	6%	65	619
Jul. 1, 2008—Sep. 30, 2008	4%	61	615	5%	63	617
Oct. 1, 2008—Dec. 31, 2008	5%	63	617	6%	65	619
Jan. 1, 2009—Mar. 31, 2009	4%	13	567	5%	15	569

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 — PRESENT

	RATE	1995-1 C.B.	
		TABLE	PG
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 — PRESENT — Continued

	RATE	1995-1 C.B. TABLE	PG
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579
Jul. 1, 2001—Sep. 30, 2001	9%	23	577
Oct. 1, 2001—Dec. 31, 2001	9%	23	577
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 30, 2002	8%	21	575
Jul. 1, 2002—Sep. 30, 2002	8%	21	575
Oct. 1, 2002—Dec. 30, 2002	8%	21	575
Jan. 1, 2003—Mar. 31, 2003	7%	19	573
Apr. 1, 2003—Jun. 30, 2003	7%	19	573
Jul. 1, 2003—Sep. 30, 2003	7%	19	573
Oct. 1, 2003—Dec. 31, 2003	6%	17	571
Jan. 1, 2004—Mar. 31, 2004	6%	65	619
Apr. 1, 2004—Jun. 30, 2004	7%	67	621
Jul. 1, 2004—Sep. 30, 2004	6%	65	619
Oct. 1, 2004—Dec. 31, 2004	7%	67	621
Jan. 1, 2005—Mar. 31, 2005	7%	19	573
Apr. 1, 2005—Jun. 30, 2005	8%	21	575
Jul. 1, 2005—Sep. 30, 2005	8%	21	575
Oct. 1, 2005—Dec. 31, 2005	9%	23	577
Jan. 1, 2006—Mar. 31, 2006	9%	23	577
Apr. 1, 2006—Jun. 30, 2006	9%	23	577
Jul. 1, 2006—Sep. 30, 2006	10%	25	579
Oct. 1, 2006—Dec. 31, 2006	10%	25	579
Jan. 1, 2007—Mar. 31, 2007	10%	25	579
Apr. 1, 2007—Jun. 30, 2007	10%	25	579
Jul. 1, 2007—Sep. 30, 2007	10%	25	579
Oct. 1, 2007—Dec. 31, 2007	10%	25	579
Jan. 1, 2008—Mar. 31, 2008	9%	71	625
Apr. 1, 2008—Jun. 30, 2008	8%	69	623
Jul. 1, 2008—Sep. 30, 2008	7%	67	621
Oct. 1, 2008—Dec. 31, 2008	8%	69	623
Jan. 1, 2009—Mar. 31, 2009	7%	19	573

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING \$10,000
FROM JANUARY 1, 1995 — PRESENT

	RATE	1995-1 C.B. TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING \$10,000
FROM JANUARY 1, 1995 — PRESENT — Continued

	RATE	1995-1 C.B. TABLE	PG
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1, 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000—Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000—Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000—Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000—Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001—Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001—Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001—Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001—Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002—Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002—Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002—Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002—Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003—Mar. 31, 2003	2.5%	10	564
Apr. 1, 2003—Jun. 30, 2003	2.5%	10	564
Jul. 1, 2003—Sep. 30, 2003	2.5%	10	564
Oct. 1, 2003—Dec. 31, 2003	1.5%	8	562
Jan. 1, 2004—Mar. 31, 2004	1.5%	56	610
Apr. 1, 2004—Jun. 30, 2004	2.5%	58	612
Jul. 1, 2004—Sep. 30, 2004	1.5%	56	610
Oct. 1, 2004—Dec. 31, 2004	2.5%	58	612
Jan. 1, 2005—Mar. 31, 2005	2.5%	10	564
Apr. 1, 2005—Jun. 30, 2005	3.5%	12	566
Jul. 1, 2005—Sep. 30, 2005	3.5%	12	566
Oct. 1, 2005—Dec. 31, 2005	4.5%	14	568
Jan. 1, 2006—Mar. 31, 2006	4.5%	14	568
Apr. 1, 2006—Jun. 30, 2006	4.5%	14	568
Jul. 1, 2006—Sep. 30, 2006	5.5%	16	570
Oct. 1, 2006—Dec. 31, 2006	5.5%	16	570
Jan. 1, 2007—Mar. 31, 2007	5.5%	16	570
Apr. 1, 2007—Jun. 30, 2007	5.5%	16	570
Jul. 1, 2007—Sep. 30, 2007	5.5%	16	570
Oct. 1, 2007—Dec. 31, 2007	5.5%	16	570
Jan. 1, 2008—Mar. 31, 2008	4.5%	62	616
Apr. 1, 2008—Jun. 30, 2008	3.5%	60	614
Jul. 1, 2008—Sep. 30, 2008	2.5%	58	612
Oct. 1, 2008—Dec. 31, 2008	3.5%	60	614
Jan. 1, 2009—Mar. 31, 2009	2.5%	10	564

Part II. Treaties and Tax Legislation

Subpart A.—Tax Conventions and Other Related Items

German Arbitration Memorandum of Understanding Announcement

Announcement 2008–124

On December 8, 2008, the Competent Authorities of the United States and Germany entered into a Memorandum of Understanding (MOU) regarding the arbitration process set forth in the United States — Germany Income Tax Convention as amended by the Protocol signed on June 1, 2006. The MOU establishes principles and guidelines for the arbitration process.

Memorandum of Understanding Between The Competent Authorities of The Federal Republic of Germany And The United States of America

Introduction

The competent authorities of the Federal Republic of Germany and of the United States of America hereby enter into the following agreement (“the Agreement”) regarding the application of the arbitration procedure under paragraph 5 and 6 of Article 25 (Mutual Agreement Procedure) of the Convention Between the Federal Republic of Germany and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital and to certain other Taxes signed on 29 August 1989 as amended by the Protocol signed on 1 June 2006 (“the Convention”). The Agreement is entered into under paragraph 22(q) of the Protocol to the Convention (“the Protocol”). The purpose of this Agreement is to provide guidance under which the U.S.-German arbitration procedure will operate.

1. Competent Authority Assistance in General
 - a. A request for competent authority assistance must comply with the requirements as set out for the United States in Revenue Procedures 2006–54 and 2006–9, or subsequent guidance, and for

Germany in the Ministry of Finance circular of 13 July 2006 (IV B 6 — S 1300 — 340/06), or subsequent guidance.

- b. Taxpayers shall submit their requests for competent authority assistance to the Contracting State of which the person is a resident. In situations involving allocation of income or deductions between related persons, each person will send its request to the Contracting State of which it is a resident.
2. Cases eligible for arbitration
 - a. According to paragraph 5 of Article 25 of the Convention, arbitration is available in respect of any case where the competent authorities have endeavored but are unable to reach an agreement under Article 25 regarding the application of those Articles of the Convention that are specified under paragraph 22 sentence 1 of the Protocol.
 - b. An unresolved competent authority request which originated with a bilateral advance pricing agreement (APA) request is eligible for arbitration procedures. For procedures regarding APAs, see paragraph 20 below.
 - c. Once a case is accepted into the mutual agreement procedure, neither competent authority will cease unilaterally to consider a case, except for the circumstances described in paragraph 3.
3. Cases ineligible for arbitration
 - a. Arbitration is not available for cases which a competent authority has not accepted, or in which a competent authority ceases to provide assistance, in accordance with the Convention, the Protocol or published guidance.
 - i. The German competent authority will generally not accept a request for competent authority assistance or will generally cease providing assistance to a taxpayer, and thus not provide for arbitration if the taxpayer

does not comply with the requirements or under circumstances as described in the Federal Ministry of Finance’s circular of 13 July 2006 – IV B 6 – S 1300 — 340/06 — (or any applicable subsequent guidance). Such requirements and circumstances are described in particular in circumstances described in sections 3.2.1., 3.3.1 and 5 of the circular.

- ii. The U.S. competent authority generally will not accept a request for competent authority assistance or will cease providing assistance to a taxpayer, and thus not provide for arbitration in the circumstances described in section 12.02 (Denial of Assistance) of Revenue Procedure 2006–54 (or any applicable subsequent guidance). In addition, the U.S. competent authority will not provide for arbitration for a case in which the taxpayer has reached a settlement on the issue with IRS Appeals (including an Appeals settlement through the Appeals arbitration process) or with Chief Counsel pursuant to an executed closing agreement or other written agreement such as Form 870–AD.
- b. Arbitration is not available for cases that have been accepted for competent authority consideration, but for which the competent authorities agree that the particular case is not suitable for determination by arbitration pursuant to paragraph 5(b)(aa)(B) of Article 25 of the Convention. This agreement may, depending on the circumstances of the particular case, be either a final decision, or a temporary deferral as is contemplated in paragraph 5.a.i below. The competent authorities will consider such agreement, for

instance, in the following scenarios:

- i. There is an inordinate and/or repeated delay in the response of a taxpayer to a request for information; or
- ii. In the event the taxpayer docket the case for which it requested competent authority assistance for litigation, the case will be considered as not suitable for arbitration if the court does not allow for suspension of the litigation proceedings until such a time as a competent authority resolution has been reached.
- iii. A temporary deferral of arbitration proceedings may also be considered in the case of an administrative appeal if the appeals proceedings have not been suspended.

4. Commencement Date

- a. Within 45 days of receipt of a MAP request for assistance each competent authority will review the request and verify whether it contains the information necessary to undertake substantive consideration for a mutual agreement, pursuant to paragraph 6(b) of Article 25 of the Convention and paragraph 22(p) of the Protocol.
- b. If a competent authority determines that the request for assistance is not complete, that competent authority will inform the taxpayer in writing within 45 days of receipt of the request, what information is necessary consistent with Rev. Proc. 2006-54 (or subsequent guidance) or the information required under the section 2.3.3 and 11.3.2 of the Federal Ministry of Finance circular of 13 July 2006 (or subsequent guidance).
- c. Once complete information is provided, pursuant to paragraph 22(p) of the Protocol, each competent authority will inform the other competent authority of the date it received the information necessary to undertake substantive consideration for a mutual agreement. The latter of these

dates will be the Commencement Date. (See paragraph 6(b) of Article 25 of the Convention.)

- d. Simultaneously, the competent authorities will confirm with each other that each has received the same information.
 - e. When the Commencement Date is established,
 - i. the competent authorities will exchange correspondence with each other confirming the Commencement Date and the date the arbitration proceedings potentially shall begin for any subsequently necessary arbitration, and
 - ii. each competent authority will inform the concerned persons resident in its territory in writing of the Commencement Date and the date the arbitration proceedings potentially shall begin for any subsequently necessary arbitration.
- #### 5. Date Arbitration Proceedings Begin
- a. Arbitration proceedings in a case shall begin on the later of:
 - i. Two years after the Commencement Date of that case, unless both competent authorities have agreed prior to the date arbitration proceedings begin to a different date, and
 - ii. The earliest date upon which the nondisclosure agreements have been received by both competent authorities. (See paragraph 6 of Article 25 of the Convention.)
 - b. If the competent authorities agree to begin arbitration proceedings on a date different from that generally required, then the competent authorities will confirm that date in writing to each other and to the concerned persons resident in their territory.
- #### 6. Board member appointment
- a. Each competent authority will appoint a member to the arbitration board by sending a written communication indicating their appointment to the other competent authority within 60 days of the

date on which the arbitration proceedings begin. (See paragraph 22(e) of the Protocol.)

- b. If either competent authority fails to appoint a member, the appointed board member shall contact the competent authority that appointed him or her. That competent authority shall contact the highest-ranking member of the Secretariat at the Centre for Tax Policy and Administration of the Organization for Economic Co-operation and Development (OECD) who is not a citizen of either Germany or the United States, who shall appoint a board member by written notice to both countries within 60 days of the date of such failure. (See paragraph 22(e) of the Protocol.)
- c. If the board members appointed by the competent authorities fail to agree upon the third member, the appointed board member(s) will contact their appointing competent authority(ies) and the necessary appointments will be made by the highest-ranking member of the Secretariat at the Centre for Tax Policy and Administration of the Organization for Economic Co-operation and Development (OECD) who is not a citizen of either Germany or the United States, by written notice to both countries within 60 days of the date of such failure. (See paragraph 22(e) of the Protocol.)
- d. The competent authorities will not appoint current government employees, or former government employees, within two years of their last employment in the government.
- e. The competent authorities will appoint members who have significant international tax experience. They need not, however, have experience as either a judge or arbitrator. Every member of an arbitration board shall be impartial and independent of the contracting states and the Concerned Persons at the time of accepting an appointment to serve, and shall remain so during the

- entire arbitration proceeding and for a reasonable time thereafter.
- f. If a board member is unable to fulfill his or her duties the chair will notify the competent authorities. The competent authority that selected the board member who is unable to fulfill his or her duties will select a substitute board member within 14 days.
 - g. If any board member is unable to fulfill his or her duties the competent authorities will consult with the remaining board members to determine whether a new timetable is necessary.
7. Nondisclosure Issues
 - a. Each concerned person and their authorized representatives or agents must agree prior to the beginning of arbitration proceedings not to disclose to any other person any information received during the course of the arbitration proceeding from either competent authority or the arbitration board, other than the determination of the board. (See paragraph 22(d) of the Protocol.)
 8. List of Chairs
 - a. The competent authorities will identify and jointly agree to 5 — 10 persons who are qualified and willing to serve as a Chair for an arbitration board.
 - b. The competent authorities will review or revise this list every third year.
 - c. Persons to be identified for this list will have significant international tax experience. They need not, however, have experience as either a judge or arbitrator. Consistent with paragraph 6(e), the Chair shall be impartial and independent of the contracting states and the Concerned Persons at the time of accepting an appointment to serve, and shall remain so during the entire arbitration proceeding and for a reasonable time thereafter.
 9. Proposed Resolution, Position Papers and Reply Submissions
 - a. Each competent authority will be permitted to submit, within 90 days of the appointment of the Chair of the arbitration board, a Proposed Resolution paper, not to exceed five pages, describing the proposed disposition of the specific monetary amounts of income, expense or taxation at issue in the case, and a supporting Position Paper, not to exceed 30 pages, plus annexes, for consideration by the arbitration board. (See paragraph 22(g) of the Protocol.)
 - b. The Proposed Resolution should be drafted in a form that provides a resolution for each specific amount of income, expense or tax at issue in the case. The Proposed Resolution may also address any related issues identified by a taxpayer's request for competent authority assistance, that are required to be resolved to determine the specific amount of income, expense or tax, for example, the threshold existence of a permanent establishment (see paragraph 13 below). Thus, as may be appropriate in a particular case, the competent authorities may agree that a Proposed Resolution (or portion thereof) need not be "an amount of income, expense or tax".
 - c. In the event that only one competent authority submits a Proposed Resolution within the allotted time, then that Proposed Resolution shall be deemed to be the determination of the board in that case and the Proceeding shall be terminated. (See paragraph 22(g) of the Protocol.)
 - d. Each competent authority may, if it so desires, submit a Reply Submission, not to exceed 10 pages, to the board within 180 days of the appointment of the Chair, to address any points raised by the Proposed Resolution or Position Paper submitted by the other competent authority. (See paragraph 22(g) of the Protocol.)
 - e. In a particular case, the competent authorities may agree on different page limitations for the Proposed Resolutions, Position Papers or Reply Submissions.
 - f. Any annex to a Position Paper must be a document previously made available for the competent authorities to use in negotiation.
 - g. The competent authorities will send to the Chair four copies of each document submitted to the board, for distribution to the board members and other competent authority.
 10. Requests for Additional Information
 - a. Additional information may be submitted to the board only at its request, and copies of the board's request and the competent authority's response shall be provided to the other competent authority on the date on which the request or the response is submitted. (See paragraph 22(g) of the Protocol.)
 - b. The board may request additional information that consists only of existing documents and may not request new or additional analyses.
 - c. The board may establish a deadline for responding to the request.
 11. Multiple Issues
 - a. A case may consist of multiple issues. The existence of multiple issues in a case will ordinarily be identified by the assertion of multiple discrete proposed adjustments arising from an audit (or if there is no adjustment, multiple discrete denied credits or claims). The Proposed Resolution and Position Paper should address each issue separately. However, in an appropriate case, the competent authorities may agree to a different presentation of issues to the board, for example, where interrelated adjustments have been proposed.
 - b. The board will make a determination on each issue separately. Thus, the final decision of the board may be comprised of portions of each of the Proposed Resolutions submitted by the competent authorities.
 12. Permanent Establishment Cases
 - a. Each competent authority is allowed to submit a Proposed Resolution and Position Paper that takes alternative positions. Thus, a competent authority may take the position that no permanent establishment exists. However, the

- competent authority may propose an amount of income to be allocated to a permanent establishment, if the board determines that a permanent establishment exists.
13. Competent Authority Initiating the Mutual Agreement Procedure
 - a. For requests for competent authority assistance concerning an adjustment raised in either Germany or the United States, the competent authority of the country that proposed the adjustment (or in the case where there is no adjustment, denied the credit or claim) is considered the competent authority initiating the Mutual Agreement Procedure.
 - b. Meeting facilities, related resources, financial management, other logistical support, and general administrative coordination of the Proceeding will be provided, at its own cost, by the competent authority that initiated the Mutual Agreement Procedure. (See paragraph 22(l) of the Protocol.)
 14. Nondisclosure
 - a. Pursuant to paragraph 22(n) of the Protocol, upon confirmation of appointment of the arbitration board, each board member must agree in a statement to abide by and be subject to the confidentiality and nondisclosure provisions of Article 26 of the Convention and the applicable domestic laws of the Contracting States, as well as to this Agreement and the Arbitration Board Operation Guidelines.
 15. Communication between the Board and the Competent Authorities
 - a. Before the chair is appointed, the competent authorities will send any correspondence concurrently to both board members.
 - b. After the chair is appointed, the competent authorities will send any correspondence to the chair. Similarly, the chair will send any correspondence concurrently to the competent authorities.
 - c. No competent authority will have any *ex parte* communications, except for administrative or logistical matters, with a board member.
 - d. All communication, except for logistical matters, between the competent authorities and the board must be in writing. Written communication by fax or email is allowed, however, no information that may identify the taxpayer(s) may be included in an email. Express mail or air mail shall be used for all correspondence other than that sent via facsimile or email.
 16. Fees and Expenses
 - a. The fees and expenses will be borne equally by the competent authorities. (See paragraph 22(o) of the Protocol.)
 - b. Neither competent authority will charge a taxpayer for costs associated with arbitration.
 - c. The fees of members of the arbitration board will be set at the fixed amount of \$2000 (two thousand United States dollars) or the equivalent in euro per day, subject to modification by the competent authorities. (See paragraph 22(o) of the Protocol.)
 - d. In general, each board member will be compensated for no more than three days of preparation, two meeting days and for travel days.
 - e. In general, the expenses of members of the arbitration board will be set in accordance with the International Centre for Settlement of Investment Disputes Schedule of Fees for arbitrators. (See paragraph 22(o) of the Protocol.)
 17. Board Determination
 - a. The determination of the board shall constitute a resolution by mutual agreement under Article 25 (Mutual Agreement Procedure) of the Convention and shall be binding on both competent authorities with respect to that case.
 - b. Within 30 days of receiving the determination each concerned person(s) must accept the determination in writing sent to the competent authority of the Contracting State of which the concerned person is a resident. If the concerned persons fail to accept the determination within 30 days, the determination is considered rejected.
 - c. If any concerned person fails to advise the competent authority within that period of time, the determination will be considered not to have been accepted and the case will be closed.
 - d. The treatment of any interest or penalties will be determined by applicable domestic law of Germany or the United States.
 18. Terminating Proceedings
 - a. If a taxpayer terminates an arbitration proceeding by withdrawing its request for assistance, then the competent authorities will exchange letters to close the case.
 - b. If a taxpayer terminates an arbitration proceeding by withdrawing its request for assistance, the Taxpayer will not ordinarily be allowed access to the competent authority procedures for the same matter and same years.
 19. Arbitration and requests for Advance Pricing Agreements (APAs)
 - a. Where the competent authorities have endeavored but are unable to reach an agreement in a case initially submitted to the competent authorities as a bilateral advance pricing agreement (APA) request this case is eligible for arbitration procedures, but only to the extent tax returns have been filed with respect to all taxable years at issue, including any years for which the taxpayer has requested a rollback, provided that the tax returns for the APA years (not including any rollback years) have been filed in accordance with the APA request.
 - b. For purposes of establishing a Commencement Date for a case initially submitted as a request for an APA, paragraph 22(p) of the Protocol provides that the information necessary to undertake substantive consideration for a mutual agreement in the United States is the information required to be submitted to the Internal Revenue Service under Revenue Procedure 2006-9, section 4 (or any applicable subsequent guidance). In Germany, the infor-

mation is that which would be required under the Ministry of Finance circular of 5 October 2006–IV B 4–S 1341–38/06—in connection with the 13 July 2006 circular (or any applicable subsequent guidance).

- c. Once complete information is provided, the Commencement Date of the case, for purposes of any subsequently necessary arbitration, will be the earlier of i) the date on which the competent authorities have exchanged position papers setting forth their

initial negotiating positions, or ii) two years from the earliest date on which the information necessary to undertake substantive consideration for a mutual agreement has been received by both competent authorities. However, the arbitration proceedings will in no event commence before one year after the submission of the tax return for the later of the corresponding tax years covered by the APA request (including any amendments) has elapsed.

- d. For requests originally submitted as an APA, the competent authority of the country in which the parent company is located is considered the competent authority initiating the Mutual Agreement Procedure. If the parent company is a resident of a 3rd state, the competent authorities will determine the competent authority serving as the one initiating the MAP.
- e. The provisions of paragraphs 1 through 18 apply as appropriate.

Agreed:

For the Federal Republic of Germany

Jörg Kraeusel
Deputy Director (International)

For the United States of America

Barry B. Shott
Deputy Commissioner (International)
Large and Mid-sized Business Division

Date:

Date:

The principal author of this announcement is Ana C. Guzman of the Office of Associate Chief Counsel (International). For further information regarding this announcement, contact Ms. Guzman at (202) 622–3880 (not a toll-free call).

German Arbitration Guidelines Announcement

Announcement 2008–125

The Deputy Commissioner (International), LMSB has developed guidelines regarding the arbitration process set forth in the United States — Germany Income Tax Convention as amended by the Protocol signed on June 1, 2006. These guidelines relate to the Memorandum of Understanding Between the Competent Authorities of the Federal Republic of Germany and the United States of America signed on December 8th, 2008 (See Ann. 2008–124, 2008–52 I.R.B. 1359). The guidelines apply to the arbitration process and, specifically, to the operations of the arbitration board.

Arbitration Board Operating Guidelines

1. Chair appointment
 - a. Within 5 business days after the appointment of the second board member by a competent authority, the board members shall contact each other to discuss appointment of a third board member, who will serve as chair.
 - b. Within 60 calendar days after the appointment of the second board member by a competent authority, the two board members shall appoint a third member, who will serve as a chair. (See paragraph 22(e) of the Protocol.)
 - c. The competent authorities will provide to their appointed board members a list of persons who the competent authorities have agreed may potentially serve as chair of the board. The competent authorities encourage the board members to select a person from the list, particularly because of issues regarding governmental contracting.
 - d. The two board members selected by the competent authorities may select as a chair a person not on

the list, however, the board members should inform the competent authorities, in writing, prior to making the appointment. If they select a person not on the list, the person need not have arbitration experience; however, he or she should have significant familiarity with international tax issues.

2. Non-disclosure
Pursuant to paragraph 22(n) of the Protocol, upon confirmation of appointment of the arbitration board, each board member must agree in a statement to abide by and be subject to the confidentiality and nondisclosure provisions of Article 26 of the Convention and the applicable domestic laws of the Contracting States, as well as to the Memorandum of Understanding and these guidelines.
3. Installation of Board
 - a. When the chair accepts his or her appointment, the chair shall write to both competent authorities to inform them of his or her acceptance, providing the non-disclosure agreements, and indicating the date of appointment and provide the chair's contact information.

4. Operating Procedures
 - a. To the extent needed, the board may adopt any additional procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with any provision of Article 25 of the Convention, the Protocol, or any other related agreement between Germany and the U.S.
 - b. If the board adopts any additional procedures, the chair shall provide a written copy of them to the competent authorities.
5. Communication with the CAs
 - a. Before the chair is appointed, the competent authorities will send any correspondence concurrently to both board members.
 - b. After the chair is appointed, the competent authorities will send any correspondence to the chair. Similarly, the chair will send any correspondence concurrently to the competent authorities.
 - c. No board member will have any *ex parte* communications, except for administrative or logistical matters, with one competent authority.
 - d. All communication, except for logistical matters, between the board and the competent authorities must be in writing. Written communication by fax or email is allowed, however, no information that may identify the taxpayer(s) may be included in an email. Express mail or air mail shall be used for all correspondence other than that sent via facsimile or email.
 - e. The board members may communicate by telephone, videoconference, fax or face-to-face meetings. Board members may communicate by email; however, they must not include any taxpayer information in the email.
 - f. All three board members must be present during substantive discussions.
 - g. No board member shall have communications regarding the issues or matters before the board with the taxpayers involved in the case or their representatives during or subsequent to the arbitration process.
6. Position papers and supporting papers
 - a. Within 90 days of the appointment of the chair, each competent authority shall submit four copies of the following documents to the board:
 - i. A proposed resolution paper not to exceed 5 pages, and
 - ii. A supporting position paper not to exceed 30 pages, plus annexes.
 - b. The chair will send a copy of each competent authority's proposed resolution and supporting position papers to the other competent authority within 5 days of receipt of the later submission by the board.
 - c. In the event that only one competent authority submits a Proposed Resolution and supporting Position Paper within the allotted time, then that Proposed Resolution shall be deemed to be the determination of the board in that case and the Proceeding shall be terminated.
7. Reply Submissions
 - a. Within 180 days of the appointment of the chair, each competent authority may submit four copies of a reply submission not to exceed 10 pages, to address any points raised by the proposed resolution or position paper submitted by the other competent authority.
 - b. The chair will send a copy of each competent authority's reply submission paper to the other competent authority within 5 days of receipt of the later reply by the board.
8. Requesting additional information
 - a. The competent authorities may not submit to the board any additional information, unless the board so requests. (See paragraph 22(g) of the Protocol.)
 - b. The board may request additional information only from either competent authority. Such a request shall be in writing and include a response deadline. On the date the board issues the request, the board shall send a copy of the request to the other competent authority.
9. Board meetings
 - a. The competent authorities encourage the members to use tele- and videoconferencing. If a face-to-face meeting is necessary, the chair will contact the competent authority of the country that initiated the mutual agreement proceeding and ask it to arrange facilities for the meeting.
 - i. For requests for competent authority assistance concerning an adjustment raised in either Germany or the United States, the competent authority of the country that proposed the adjustment (or in the case where there is no adjustment, denied the credit or claim) is considered the competent authority initiating the Mutual Agreement Procedure.
 - ii. For requests originally submitted as an APA, the competent authority of the country in which the parent company is located is considered the competent authority initiating the Mutual Agreement Procedure. If the parent company is a resident of a 3rd state, the competent authorities will determine the competent authority serving as the one initiating the MAP.
 - b. The competent authority will arrange meeting facilities in a location that minimizes the board's travel time and expenses. Each competent authority may arrange a meeting in the other's meeting facilities, as needed.
10. A board member's use of staff
 - a. The competent authorities anticipate that board members will be able to perform their duties without the use of additional staff.
 - b. If a board member uses staff, that staff person must sign a non-disclosure agreement before performing any work on the matter.

- c. The board member must send the non-disclosure agreement to the competent authorities.
 - d. The staff person must be subject to the same conflict of interest rules as the board member.
 - e. The competent authorities will not compensate the staff member.
11. Payment of board members
- a. The expenses of members of the board shall be set in accordance with the International Centre for Settlement of Investment Disputes (ICSID) Schedule of Fees for arbitrators, as in effect on the date on which the arbitration proceedings begin. (See paragraph 22(o) of the Protocol.) This applies in particular for hotel, meals and incidental costs. With regard to travel expenses, board members will be reimbursed for economy class travel.
 - b. With respect to fees, each board member will be compensated for no more than three days of preparation, for two meeting days and for travel days.
 - c. If the board members feel they require additional time to properly consider the case, the Chair will contact the competent authorities to request additional time.
12. Inability of a board member to fulfill duties
- a. If the chair is unable to fulfill his or her duties, the remaining two board members will jointly inform both competent authorities and select a new chair within 14 days.
 - b. If one of the other board members is unable to fulfill his or her duties, the chair will notify the competent authorities. The competent authority that selected the board member who is unable to fulfill his or her duties will select a substitute board member within 14 days.
 - c. If any board member is unable to fulfill his or her duties the competent authorities will consult with the remaining board members to determine a new timetable, if necessary.
 - d. Should it come to light that a board member has a conflict of interest which would have prevented that member's original appointment, the board member must recuse himself or herself from consideration of the case and inform the competent authorities.
13. Process for board's determination
- a. The board must make a determination by adopting one of the proposed resolutions submitted by the competent authorities.
 - b. For each issue, each board member must choose one of the proposed resolutions.
 - c. A majority vote shall determine the decisions of the board in a case.
14. Multiple issue cases
- a. If a case contains more than one issue (for example, the case involves the transfer of tangible goods, the transfer of intangible goods and the performance of services) the board will make a determination on each issue individually.
15. Permanent establishment cases
- a. If the competent authorities have not reached an agreement on the existence of a permanent establishment, the board members must first determine whether a permanent establishment exists.
 - b. Once it is determined that a permanent establishment exists, the board members must then determine the amount of profits attributable to that permanent establishment. Accordingly, the competent authorities may submit a position paper and supporting paper that take alternative positions. For example, a competent authority may take the position that a permanent establishment does not exist. That competent authority may also take the position that if the board determines that a permanent establishment exists, a certain amount of income should be allocated to that permanent establishment.
16. Board's Determination
- a. Within 9 months of the appointment of the chair, the chair shall provide the written determination concurrently to each competent authority. (See paragraph 22(h) of the Protocol.)
- b. The written determination shall include only one of the two proposed resolutions for the issue(s) presented to the Board except for in circumstances described in paragraph 11 of the Memorandum of Understanding.
 - c. The board will not determine the treatment of any associated interest or penalties; rather that treatment will be determined by applicable domestic law of Germany and the United States, as the case may be. (See paragraph 22(m) of the Protocol.)
 - d. The written determination shall not include any rationale or analysis. (See paragraph 22(j) of the Protocol.)
 - e. The determination of the board will have no precedential value. (See paragraph 22(j) of the Protocol.)
 - f. No information relating to the Proceeding (including the board's determination) may be disclosed by the members of the arbitration board or their staffs or by either competent authority, except as permitted by the Convention and the domestic laws of Germany or the United States. (See paragraph 22(n) of the Protocol.)
17. Terminating a Proceeding
- a. A Proceeding may be terminated by the board's determination in the matter, by the competent authorities reaching a mutual agreement, or by a taxpayer's withdrawal of its competent authority request.
 - b. If a taxpayer withdraws its competent authority request, the competent authorities will notify the board that the taxpayer has withdrawn its request and the arbitration process is terminated.
 - c. If the competent authorities wish to terminate a proceeding (for example, because they have reached an agreement on the treatment of the case), the competent authorities will notify the board that they have reached a mutual agreement

and the arbitration process is terminated.

- d. At the termination of any proceeding each board member must immediately destroy all documents or other information received from either competent

authority, or otherwise reflecting the considerations or discussions of the arbitration board, and delete all information that may be stored on any computer, personal data assistant or other electronic device or media.

The principal author of this announcement is Ana C. Guzman of the Office of Associate Chief Counsel (International). For further information regarding this announcement, contact Ana C. Guzman at (202) 622-3880 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Reporting and Wage Withholding Under Internal Revenue Code § 409A

Notice 2008–115

I. PURPOSE

This notice provides interim guidance to employers and payers on their reporting and wage withholding requirements with respect to amounts includible in gross income under § 409A of the Internal Revenue Code. This notice also provides interim guidance to employers and payers on their reporting requirements with respect to all deferrals of compensation under § 409A. This notice does not affect the application of § 3121(v)(2) or an employer's reporting obligations under § 31.3121(v)(2)–1 of the Employment Tax Regulations. In addition, this notice provides guidance to service providers on their income tax reporting and tax payment requirements with respect to amounts includible in gross income under § 409A. Generally, these requirements reflect an extension of the guidance provided in Notice 2006–100 and Notice 2007–89 applicable to calendar years 2005, 2006, and 2007.

This interim guidance is effective for calendar year 2008 and will remain in effect for subsequent calendar years until the Treasury Department and the IRS issue further guidance. The Treasury Department and the IRS do not anticipate that further guidance will be issued until the recently proposed regulations under § 409A addressing the calculation of the amount includible in income under § 409A(a) and the calculation of the additional taxes under § 409A(a) are finalized. See REG–148326–05, 2008–51 I.R.B. 1325 [73 Fed. Reg. 74380] (Dec. 8, 2008). The Treasury Department and the IRS further anticipate that with respect to annual deferral reporting (Form W–2, box 12, code Y and Form 1099–MISC, box 15a), such guidance will not be made effective before the calendar year beginning after such regulations are finalized.

II. BACKGROUND

A. The American Jobs Creation Act of 2004

Section 885 of the American Jobs Creation Act of 2004, Pub. Law No. 108–357, 118 Stat. 1418 (the Act), added § 409A, which provides, *inter alia*, that all amounts deferred under a nonqualified deferred compensation plan for all taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income, unless certain requirements are met. Section 885(b) of the Act amended the Code to impose the following reporting and wage withholding requirements with respect to deferrals of compensation within the meaning of § 409A.

- The Act amended §§ 6041 and 6051 to require that an employer or payer report all deferrals for the year under a nonqualified deferred compensation plan on a Form W–2 (*Wage and Tax Statement*) or a Form 1099–MISC (*Miscellaneous Income*), regardless of whether such deferred compensation is includible in gross income under § 409A(a).
- The Act amended § 3401(a) to provide that the term “wages” includes any amount includible in the gross income of an employee under § 409A.
- The Act amended § 6041 to require that a payer report amounts includible in gross income under § 409A that are not treated as wages under § 3401(a).

B. Notice 2005–1

On December 20, 2004, the IRS issued Notice 2005–1, 2005–1 C.B. 274, which provides guidance with respect to the application of § 409A. Additionally, in accordance with the amendments made by § 885(b) of the Act, Notice 2005–1 provides the following with respect to reporting and wage withholding requirements for deferred amounts:

- An employer reports to an employee the total amount of deferrals for the year under a nonqualified deferred

compensation plan in box 12 of Form W–2 using code Y. See Q&A–29.

- An employer reports amounts includible in gross income under § 409A and in wages under § 3401(a) in box 1 of Form W–2 as wages paid to the employee during the year and subject to income tax withholding. An employer also reports such amounts in box 12 of Form W–2 using code Z. See Q&A–33.
- A payer reports to a nonemployee the total amount of deferrals for the year under a nonqualified deferred compensation plan in box 15a of Form 1099–MISC. See Q&A–30.
- A payer reports amounts includible in gross income under § 409A and not treated as wages under § 3401(a) as nonemployee compensation in box 7 of Form 1099–MISC. A payer also reports such amounts in box 15b of Form 1099–MISC. See Q&A–35.

C. Final Regulations

On April 10, 2007, the IRS issued final regulations regarding the application of § 409A, applicable for taxable years beginning on or after January 1, 2009. See T.D. 9321, 2007–1 C.B. 1123 [72 Fed. Reg. 19234] (April 17, 2007) and Notice 2007–86, 2007–46 I.R.B. 990 (October 22, 2007). The regulations generally incorporate and expand on the guidance provided in Notice 2005–1. Under Notice 2007–86, taxpayers generally are not required to comply with the final regulations until January 1, 2009, but taxpayers may rely on the final regulations for periods before January 1, 2009. The final regulations generally supersede Notice 2005–1 for periods beginning after 2008. However, the regulations do not address reporting and withholding requirements, and accordingly do not supersede Notice 2005–1, Q&A–24 through Q&A–38, which address those issues. See Preamble to the Final Regulations, Effect on Other Documents, 72 Fed. Reg. 19275.

D. Notice 2007–89

On October 23, 2007, the IRS issued Notice 2007–89, 2007–46 I.R.B. 998,

which provided guidance to employers and payers on their reporting and withholding obligations with respect to deferrals of compensation and amounts includible in gross income under § 409A during calendar year 2007. The notice permanently waived employers' and payers' reporting requirements under §§ 6041 and 6051 for calendar year 2007 with respect to annual deferrals of compensation within the meaning of § 409A (Form W-2, box 12, code Y and Form 1099-MISC, box 15a). The notice also provided guidance regarding the calculation of amounts includible in income under § 409A, and the application of the employer and payer reporting and withholding requirements for such amounts under § 409A (Form W-2, box 12, code Z and Form 1099-MISC, box 15b).

E. Notice 2008-113 and Notice 2007-100

On December 3, 2007, the IRS issued Notice 2007-100, 2007-52 I.R.B. 1243, which provided transition relief and guidance on the correction of certain failures of a nonqualified deferred compensation plan to comply with § 409A(a) in operation. On December 5, 2008, the IRS issued Notice 2008-113, 2008-51 I.R.B. 1305 (Dec. 22, 2008), which clarified and expanded upon Notice 2007-100. Notice 2008-113 obsoletes Notice 2007-100 for taxable years beginning on or after January 1, 2009, though taxpayers may rely on either notice for taxable years beginning before January 1, 2009. For employers, payers, and service providers entitled to the transition relief, the notices modified Notice 2006-100 and Notice 2007-89 with respect to (i) the amount that is required to be included in income by a service provider under § 409A(a), and (ii) the amount that is required to be reported by the employer or payer as an amount includible in income under § 409A(a). Nothing in this notice is intended to limit or modify any relief available under Notice 2008-113 or Notice 2007-100.

III. INTERIM EMPLOYER AND PAYER REPORTING AND WAGE WITHHOLDING PROVISIONS

This section provides interim guidance on employers' and payers' reporting and wage withholding requirements.

A. Annual Deferrals – Amounts Reportable on Form W-2 or Form 1099-MISC

Until the Treasury Department and the IRS issue further guidance, an employer is not required to report amounts deferred during the year under a nonqualified deferred compensation plan subject to § 409A in box 12 of Form W-2 using code Y. In addition, until the Treasury Department and the IRS issue further guidance, a payer is not required to report amounts deferred during the year under a nonqualified deferred compensation plan subject to § 409A in box 15a of Form 1099-MISC.

B. Reporting and Withholding – Amounts Includible in Gross Income under § 409A

Section 3401(a) provides that for income tax withholding purposes the term “wages” includes any amount includible in gross income of an employee under § 409A, and payment of such amount is treated as having been made in the taxable year in which the amount is includible in gross income. Thus, an employer must treat amounts includible in gross income under § 409A as wages for income tax withholding purposes. An employer is required to report such amounts as wages paid on line 2 of Form 941, *Employer's QUARTERLY Federal Tax Return*, and in box 1 of Form W-2. An employer must also report such amounts as § 409A income in box 12 of Form W-2 using code Z. Amounts includible in gross income under § 409A are supplemental wages for purposes of determining the amount of income tax required to be deducted and withheld under § 3402(a), regardless of whether the employer has paid the employee any regular wages during the calendar year of the payment. See Publication 15, (*Circular E*), *Employer's Tax Guide*, for the withholding rules with respect to supplemental wages. The amount required to be withheld is not increased on account of the additional income taxes imposed under § 409A(a)(1)(B). To the extent future guidance requires additional withholding, that guidance will only be prospective. Employees should thus be aware that estimated tax payments may be required to avoid penalties under § 6654.

For nonemployees, § 6041(g)(2) requires a payer to report to a nonemployee any amount that is includible in gross income under § 409A that is not treated as wages under § 3401(a). Thus, a payer must report amounts includible in gross income under § 409A and not treated as wages under § 3401(a) as nonemployee compensation in box 7 of Form 1099-MISC. A payer must also report such amounts as § 409A income in box 15b of Form 1099-MISC. Nonemployees should be aware that estimated tax payments may be required to avoid penalties under § 6654.

1. Calculation of Amounts Includible in Income under § 409A(a) – In General

Section 409A(a)(1)(A)(i) provides that if at any time during a taxable year a nonqualified deferred compensation plan fails to meet the requirements of § 409A(a)(2), (3) or (4), all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income. Accordingly, for purposes of this notice, the amount includible in gross income under § 409A(a) and required to be reported by the employer or payer equals the portion of the total amount deferred under the plan (meaning the aggregated plan as defined for purposes of § 409A) that, as of December 31 of the applicable calendar year, is not subject to a substantial risk of forfeiture (as defined for purposes of § 409A), and has not been included in income in a previous year, plus any amounts of deferred compensation paid or made available to the service provider under the plan during the applicable calendar year. For purposes of this paragraph, an employer or payer may treat an amount as previously included in income if properly reported by the employer or payer on a Form W-2, Form 1099-MISC, or Form W-2c or corrected Form 1099-MISC for a prior calendar year. Thus, amounts properly reported on a Form W-2 or Form 1099-MISC, or Form W-2c or corrected Form 1099-MISC for a prior calendar year should not be reported again on a Form W-2 or Form 1099-MISC for a subsequent calendar year.

Amounts includible in gross income under § 409A(a) include only amounts deferred that are subject to § 409A. Accordingly, for purposes of this section III.B.1., references to amounts deferred under a plan, including references to account balances, refer solely to amounts deferred that are subject to § 409A and not, for example, to amounts deferred that were earned and vested prior to January 1, 2005, and that are not otherwise subject to § 409A due to the application of the effective date provisions. For rules regarding the application of the effective date provisions of § 409A to nonqualified deferred compensation plans, see § 1.409A-6.

The provisions of this notice addressing the calculation of the amounts includible in income are intended as interim guidance only. The Treasury Department and the IRS have proposed regulations addressing (i) the calculation of the amount includible in income under § 409A(a), and (ii) the calculation of the additional taxes under § 409A(a). When the regulations are finalized and become effective, the final regulations will obsolete this notice with respect to those topics. Accordingly, comments with respect to those topics should be submitted in accordance with the AD-DRESSES section of the preamble to the proposed regulations. See 73 Fed. Reg. 74380 (Dec. 8, 2008). For the submission of comments with respect to other topics not addressed by the proposed regulations, see Section V. of this notice.

2. Wage Payment Date of Amounts Includible in Income under § 409A(a)

Amounts includible in gross income under § 409A(a) that are either actually or constructively received (disregarding the application of § 409A) by an employee are considered a payment of wages by the employer when received by the employee for purposes of withholding, depositing, and reporting the income tax at source on wages under § 3401(a).

Amounts includible in gross income under § 409A(a) that are neither actually nor constructively received (disregarding the application of § 409A) by the employee during the applicable calendar year, are treated as a payment of wages on December 31 of that calendar year for purposes of withholding, depositing, and reporting the income tax at source

on wages under § 3401(a). If as of December 31 of the applicable calendar year, the employer does not withhold income tax from the employee on such wages, or withholds less than the amount of income taxes required to be withheld under § 3402 from the employee, the employee will receive credit under § 31 for that calendar year if the employer follows one of two possible options. Under the first option, notwithstanding § 31.6205-1(c)(4), the employer withholds or recovers from the employee the amount of the undercollection after December 31 of the applicable calendar year and before February 1 of the subsequent calendar year, and reports as wages for the quarter ending December 31 of the applicable calendar year, such amounts that were neither actually nor constructively received but are includible in income under § 409A on Form 941 for that quarter and in box 1 of the employee's Form W-2 for 2008. Under the second option, the employer pays the income tax withholding liability on behalf of the employee (without deduction from the employee's wages or other reimbursement by the employee), and reports the gross amount of wages and the income tax withholding liability for the quarter ending December 31 of the applicable calendar year, as including such amounts that were neither actually nor constructively received but are includible in income under § 409A, as well as the Federal Insurance Contributions Act, Federal Unemployment Tax Act, and income tax withholding wages resulting from paying the income tax on the employee's behalf, on Form 941 and Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, and in box 1 of the employee's Form W-2 for that initial calendar year. See Rev. Rul. 58-113, 1958-1 C.B. 362, and Rev. Rul. 86-14, 1986-1 C.B. 304, for methods of computing gross wages when paying income tax on behalf of an employee. In addition, for purposes of the deposit requirements associated with such wages, if the income tax withholding liability with respect to such wages is paid to the IRS by the due date of the Form 941 for the quarter ending December 31 of the applicable calendar year, on which the wages are reported, then the amount of income tax withholding liability will be considered to have been deposited in accordance with the rules of § 31.6302-1(c). Thus,

penalties for failure to deposit taxes under § 6656 will not be imposed with respect to such amount.

3. Amounts Includible in Income under § 409A(a)

The following sections provide guidance for calculating the total amount deferred under the plan, for purposes of determining the amount required to be included in gross income under § 409A(a) in accordance with the rules described in section III.B.1 of this notice.

a. Account Balance Plans

For a plan that is an account balance plan as defined in § 1.409A-1(c)(2)(i)(A) or (B), the amount deferred as of December 31 of a calendar year equals the amount that would be treated as an amount deferred under § 31.3121(v)(2)-1(c)(1) on December 31 of that calendar year if the entire account balance under such plan (including all principal amounts, adjusted for income, gain or loss credited to the service provider's account) as of December 31 of that calendar year were treated as a principal amount credited to the service provider's account on December 31 of that calendar year. These same calculation rules apply for purposes of determining the amount reported on Form 1099-MISC for a calendar year with respect to a nonemployee participating in an account balance plan. For purposes of this section, a plan described in § 1.409A-1(c)(2)(i)(A) (elective account balance plan) is not aggregated with a plan described in § 1.409A-1(c)(2)(i)(B) (nonelective account balance plan).

b. Nonaccount Balance Plans — Amounts that are Reasonably Ascertainable

For a plan that is a nonaccount balance plan as defined in § 1.409A-1(c)(2)(i)(C), where the amount deferred is reasonably ascertainable within the meaning of § 31.3121(v)(2)-1(e)(4), the amount deferred as of December 31 of a calendar year equals the present value of all future payments to which the service provider has obtained a legally binding right as of December 31 of that calendar year, calculated in accordance with § 31.3121(v)(2)-1(c)(2) as if the service

provider had obtained all of such rights on December 31 of that calendar year. Section 31.3121(v)(2)-1(e)(4)(i)(B) provides that an amount deferred is considered reasonably ascertainable on the first date on which the amount, form, and commencement date of the benefit payments attributable to the amount deferred are known, and the only actuarial or other assumptions regarding future events or circumstances needed to determine the amount deferred are interest and mortality. An amount does not fail to be reasonably ascertainable if alternative forms or commencement dates are available that provide an actuarially equivalent benefit to the normal benefit commencing at the normal commencement date. In addition, an amount deferred does not fail to be reasonably ascertainable on a date merely because the exact amount of the benefit payable cannot readily be calculated on that date or merely because the exact amount of the benefit payable depends on future changes in the cost of living. If the exact amount of the benefit payable depends on future changes in the cost of living, the amount deferred must be determined using a reasonable assumption as to the future changes in the cost of living. These same rules apply for purposes of determining the amount reported on Form 1099-MISC for a calendar year with respect to a nonemployee participating in a nonaccount balance plan.

c. Amounts Deferred Under Stock Rights Covered by § 409A

For a plan that provides stock rights as defined in § 1.409A-1(c)(2)(i)(H), the amount deferred as of December 31 of a calendar year equals the amount that the service provider would be required to include in income if the stock rights were immediately exercisable and exercised on December 31 of that calendar year. In general, this will mean that with respect to a stock right outstanding as of December 31 of a calendar year, the amount deferred as of December 31 of that calendar year equals the fair market value of the underlying stock less the sum of the exercise price and any amount paid by the service provider for the stock right.

d. Other Deferred Amounts

For all deferred amounts not addressed in section III.B.2.a, b, or c of this notice,

the amount deferred as of December 31 of a calendar year must be determined under a reasonable, good faith application of a reasonable, good faith method. For this purpose, a reasonable, good faith application of a reasonable, good faith method generally must reflect reasonable, good faith assumptions with respect to any contingencies as to the timing or amount of any payment. Generally, the use of an assumption with respect to a contingency that results in the amount deferred being the lowest potential value of the future payment will be presumed not to be a reasonable, good faith assumption unless clear and convincing evidence demonstrates that the assumption is reasonable. For example, where a payment may be made in more than one form, the assumption that the payment will be made in the least valuable form will be presumed not to be a reasonable, good faith assumption unless clear and convincing evidence demonstrates otherwise. For the ability to rely on the assumptions concerning time and form of payment set forth in the proposed regulations, see section V of this notice. If a portion of a deferred amount can be calculated under section III.B.2.a, b, or c of this notice, a reasonable, good faith method of calculation will in fact be a combination of two methods. The method applicable under section III.B.2.a, b, or c of this notice must be applied to the portion, and the balance of the deferred amount must be determined under a reasonable good faith method.

4. Amounts Includible in Income under § 409A(b)

Section 409A(b)(1) provides generally that in the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, such assets shall be treated as property transferred in connection with the performance of services for purposes of § 83 whether or not such assets are available to satisfy claims of general creditors at the time set aside if such assets (or such trust or other arrangement) are located outside of the United States, or at the time transferred if such assets (or such trust or other arrangement) are subsequently transferred outside of the United States.

Section 409A(b)(2) provides that in the case of compensation deferred under a nonqualified deferred compensation plan, there is a transfer of property within the meaning of § 83 with respect to such compensation as of the earlier of the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer's financial health, or the date on which assets are so restricted, whether or not such assets are available to satisfy claims of general creditors.

Section 409A(b)(3) provides that if, during a restricted period with respect to a single-employer defined benefit pension plan, assets are set aside or reserved in, or transferred to, a trust or other arrangement for purposes of paying deferred compensation for an applicable covered employee under a nonqualified deferred compensation plan of the plan sponsor or a member of its controlled group, or a nonqualified deferred compensation plan of the plan sponsor or a member of its controlled group provides that assets will become restricted to the provision of benefits, or assets are so restricted, in connection with such restricted period (or similar financial measure determined by the Secretary), the assets are treated as a transfer of property for purposes of § 83 whether or not such assets are available to satisfy claims of general creditors.

Section 409A(b)(4) provides that for each taxable year that assets treated as transferred under § 409A(b) remain set aside in a trust or other arrangement subject to § 409A(b)(1) or (2), any increase in value in, or earnings with respect to, such assets shall be treated as an additional transfer of property under this subsection (to the extent not previously included in income).

Notice 2006-33, 2006-1 C.B. 754, provides transition guidance related to the application of § 409A(b) to certain arrangements outstanding as of March 21, 2006. Under that relief, amounts transferred to trusts under the arrangement on or before March 21, 2006, that triggered the income inclusion and additional taxes under § 409A(b), or arrangements that otherwise triggered the income inclusion and additional taxes under § 409A(b) on or before March 21, 2006, generally are treated as not having triggered the inclusion or

additional tax provisions of § 409A(b), provided that the arrangements become compliant with § 409A(b) by January 1, 2008. Section VI of Notice 2007-78, 2007-41 I.R.B. 780, and Notice 2007-86 provide that such relief is not extended beyond December 31, 2007, and nothing in this notice is intended to modify or extend that relief.

However, where amounts have been transferred to a trust under an arrangement that triggers the income inclusion and additional taxes under § 409A(b), or the arrangement otherwise triggers the income inclusion and additional taxes under § 409A(b), and the transfer is not eligible for the relief in Notice 2006-33 (for example because the transfer occurred after March 21, 2006, or the arrangement is not made compliant with § 409A(b) by January 1, 2008), employers and payers must make a reasonable, good faith application of a reasonable, good faith method to determine the amount includible in income for purposes of reporting. In addition, employers must treat the amount as wages for purposes of § 3401. Amounts includible in income under § 409A(b) that are not eligible for the relief in Notice 2006-33 are treated as wages paid on the date the deemed transfer of property under § 83 described in § 409A(b) would be required to be included in income under the rules of § 83, for purposes of withholding, depositing and reporting the income tax at source on wages under § 3401(a). For amounts includible in income under § 409A(b) that were eligible for the relief in Notice 2006-33 (“grace period assets”) but are includible in income under § 409A(b) because the arrangement is not made compliant with § 409A(b) on or before December 31, 2007, Section VI of Notice 2007-78 provides that the date of the deemed transfer of property is January 1, 2008.

C. Protection from Future Additional Reporting or Withholding

An employer or payer who complies with the rules of this notice regarding the calculation of the amounts includible in gross income under § 409A and withholding and reporting for a calendar year will not be liable for additional income tax withholding or penalties, or be required to file a subsequent corrected informa-

tion return or furnish a corrected payee statement, as a result of future published guidance with respect to the calculation of amounts includible in gross income under § 409A. If it is subsequently determined that the employer did not apply the rules of this notice in determining amounts includible in gross income under § 409A and in wages under § 3401(a) for a calendar year, any recalculation of these amounts will result in additional liability for income tax withholding under § 3403 for these years, plus any applicable penalties (e.g., §§ 6721 and 6722). In addition, an employer or payer who does not apply the rules of this notice in determining amounts includible in gross income under § 409A and in wages under § 3401(a) for a calendar year will be required to file an original or a corrected information return and furnish an original or a corrected payee statement. For purposes of determining any amount includible in income under § 409A in a subsequent year, an amount will not be treated as previously included in income unless the amount has been reported appropriately on an information return and payee statement, or has been included in income by the service provider in a previous year.

IV. SERVICE PROVIDER REQUIREMENTS WITH RESPECT TO AMOUNTS INCLUDIBLE IN GROSS INCOME UNDER § 409A

This section provides guidance on service providers’ income tax reporting and tax payment requirements for a calendar year with respect to deferrals of compensation that are includible in gross income under § 409A.

A. Amounts Required to be Included in Income

A service provider must report as income and pay any taxes due relating to amounts includible in gross income under § 409A for a calendar year. For purposes of determining the amount required to be included in income under § 409A, the same standards apply to a service provider as apply to an employer or payer when calculating the amount required to be reported as income under § 409A, provided that an amount is treated as previously included in income only if the amount has been included in the service provider’s income

in a previous taxable year (regardless of whether reported on a Form W-2 or Form 1099-MISC). Accordingly, an employee or other service provider must calculate the amounts required to be included in gross income under the same methods and standards as set forth in section III. Whether a service provider has complied with the requirements of this notice is determined independently of whether the employer or payer has complied with the requirements of this notice. Thus, if the service provider includes in income the same amount reported by the employer or payer, the service provider has not necessarily complied with the terms of this notice.

If the service provider does not report and pay taxes due with respect to amounts includible in gross income under § 409A in accordance with the guidance contained in this notice, the IRS may assert additional income taxes and penalties under §§ 6651(a)(1) and (2), 6654, and 6662 if it is determined that the amount of taxes reported and paid for calendar year 2008 was underreported or underpaid. Interest imposed under Chapter 67 of the Code will apply to any underpayments of tax resulting from a service provider’s failure to include amounts includible in gross income under § 409A. For purposes of determining the amount includible in income under § 409A in a subsequent year, the service provider may treat an amount as previously included in income only if the service provider has actually and properly included the amount in gross income in a previous year.

B. Calculation of Additional Tax under § 409A(a)(1)(B)(i)(I)

Section 409A(a)(1)(B)(i)(I) provides that if compensation is required to be included in gross income under § 409A(a)(1)(A), the tax imposed on such income is increased by the sum of two additional taxes equal to the amount of interest determined under § 409A(a)(1)(B)(ii) plus an amount equal to 20% of the compensation which is required to be included in gross income. Section 409A(a)(1)(B)(ii) provides that the amount of interest is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross

income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

Section 885(d)(1) of the Act provides that § 409A generally applies to amounts deferred after December 31, 2004. Section 885(d)(2)(B) of the Act provides that amounts deferred in taxable years beginning before January 1, 2005, shall be treated as amounts deferred in a taxable year beginning on or after such date if the plan under which the deferral is made is materially modified after October 3, 2004. Accordingly, for purposes of the calculation of the additional tax under § 409A(a)(1)(B)(ii), taxpayers may treat amounts deferred under a plan that were originally deferred on or before January 1, 2005, but became subject to § 409A due to the material modification of the plan after October 3, 2004, as deferred on January 1, 2005.

V. RELIANCE ON THE PROPOSED REGULATIONS

The Treasury Department and the IRS recently proposed regulations addressing the topics addressed by this notice with respect to (i) the calculation of the amount includible in income under § 409A(a) (including the identification and treatment of deferred amounts subject to a substantial risk of forfeiture and deferred amounts previously included in income), and (ii) the calculation of the additional taxes under § 409A(a). See 73 Fed. Reg. 74380 (Dec. 8, 2008). For example, the proposed regulations would require that certain assumptions be used if a deferred amount may be payable at alternative times and forms of payment. Until the Treasury Department and the IRS issue further guidance, compliance with the provisions of the proposed regulations with respect to the calculation of the amount includible in income under § 409A(a) and the calculation of the additional taxes under § 409A will be treated as compliance with the requirements of this notice, provided that the taxpayer complies with all the provisions of the proposed regulations.

VI. REQUEST FOR COMMENTS

The provisions of this notice are intended as interim guidance only. The Treasury Department and the IRS have

proposed regulations addressing (i) the calculation of the amount includible in income under § 409A(a) and (ii) the calculation of the additional taxes under § 409A(a). When the regulations are finalized and become effective, the final regulations will obsolete this notice with respect to those topics. Accordingly, comments with respect to those topics should be submitted in accordance with the AD-DRESSES section of the preamble to the proposed regulations. See 73 Fed. Reg. 74380 (Dec. 8, 2008). Comments with respect to other topics not addressed by the proposed regulations, such as the calculation of amounts includible in income under § 409A(b), should be submitted in accordance with this section.

Comments must be submitted by March 29, 2009. All materials submitted will be available for public inspection and copying. Comments may be submitted to Internal Revenue Service, CC:PA:LPD:RU (Notice 2008–115), Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to the Courier's Desk at 1111 Constitution Avenue, NW, Washington, DC 20224, Attn: CC:PA:LPD:RU (Notice 2008–115), Room 5203. Submissions may also be sent electronically via the internet to the following email address: Notice.comments@irs.counsel.treas.gov. Include the notice number (Notice 2008–115) in the subject line.

VII. EFFECT ON OTHER DOCUMENTS

Notice 2005–1 is modified. Notice 2006–100, Notice 2007–89, Notice 2007–100, and Notice 2008–113 are not affected by this notice.

VIII. EFFECTIVE DATE

This notice is effective with respect to employers' and payers' reporting and wage withholding requirements and with respect to service providers' filing requirements and tax payment obligations relating to amounts includible in gross income under § 409A for service provider taxable years beginning on or after January 1, 2008.

IX. DRAFTING INFORMATION

The principal author of this notice is Don M. Parkinson of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Governments Entities), although other Treasury and IRS officials participated in its development. For further information on the provisions of this notice addressing the calculation of the amount includible in income under § 409A, contact Stephen Tackney at (202) 927–9639; for further information on other provisions of this notice, including the reporting and withholding provisions, contact Mr. Parkinson at (202) 622–6040 (not toll-free numbers).

Extension of Interim Guidance on Section 67 Limitations on Estates or Trusts

Notice 2008–116

PURPOSE

This notice extends to taxable years that begin before January 1, 2009, the interim guidance provided in Notice 2008–32, 2008–11 I.R.B. 593, on the treatment under § 67 of the Internal Revenue Code of investment advisory costs and other costs subject to the 2-percent floor under § 67(a) that are integrated as part of one commission or fee paid to the trustee or executor (“Bundled Fiduciary Fee”) and are incurred by a trust other than a grantor trust (nongrantor trust) or an estate. Notice 2008–32 is modified and superseded.

BACKGROUND

On January 16, 2008, the Supreme Court of the United States issued its decision in *Michael J. Knight, Trustee of William L. Rudkin Testamentary Trust v. Commissioner*, 552 U.S. ___, 128 S. Ct. 782 (2008), holding that costs paid to an investment advisor by a nongrantor trust or estate generally are subject to the 2-percent floor for miscellaneous itemized deductions under § 67(a). The IRS and the Treasury Department expect to issue regulations under § 1.67–4 of the Income Tax Regulations consistent with the Supreme Court's holding in *Knight*. The regulations also will address the issue raised when a nongrantor trust or estate

pays a Bundled Fiduciary Fee for costs incurred in-house by the fiduciary, some of which are subject to the 2-percent floor and some of which are fully deductible without regard to the 2-percent floor. The regulations, however, will not be issued in time to be applicable to the 2008 taxable year.

Notice 2008-32 provides interim guidance that specifically addresses the treatment of a Bundled Fiduciary Fee. In short, Notice 2008-32 provides that taxpayers will not be required to determine the portion of a Bundled Fiduciary Fee that is subject to the 2-percent floor under § 67 for any taxable year beginning before January 1, 2008.

EXTENSION OF INTERIM GUIDANCE

Taxpayers will not be required to determine the portion of a Bundled Fiduciary Fee that is subject to the 2-percent floor under § 67 for any taxable year beginning before January 1, 2009. Instead, for each such taxable year, taxpayers may deduct the full amount of the Bundled Fiduciary Fee without regard to the 2-percent floor. Payments by the fiduciary to third parties for expenses subject to the 2-percent floor are readily identifiable and must be treated separately from the otherwise Bundled Fiduciary Fee.

EFFECT ON OTHER DOCUMENTS

Notice 2008-32 is modified and superseded.

CONTACT INFORMATION

The principal author of this notice is Jennifer N. Keeney of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Jennifer N. Keeney at (202) 622-3060 (not a toll-free call).

*26 CFR 601.601: Rules and regulations.
(Also: Part I, §§ 301, 305.)*

Rev. Proc. 2008-68

SECTION 1. PURPOSE

This revenue procedure provides temporary guidance regarding certain stock

distributions by real estate investment trusts (REITs).

SECTION 2. BACKGROUND

.01 Section 305(a) of the Internal Revenue Code (“Code”) provides that, except as otherwise provided in section 305, gross income does not include the amount of any distribution of the stock of a corporation made by such corporation to its shareholders with respect to its stock.

.02 Section 305(b)(1) provides that section 305(a) shall not apply to a distribution by a corporation of its stock, and the distribution shall be treated as a distribution of property to which section 301 applies, if the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either in its stock or in property.

.03 Section 305(b)(2) provides that section 305(a) shall not apply to a distribution by a corporation of its stock, and the distribution shall be treated as a distribution of property to which section 301 applies, if the distribution (or a series of distributions of which such distribution is one) has the result of the receipt of property by some shareholders, and an increase in the proportionate interests of other shareholders in the assets or earnings and profits of the corporation.

.04 Section 1.305-2 of the Income Tax Regulations provides that under section 305(b)(1), if any shareholder has the right to an election or option with respect to whether a distribution shall be made either in money or any other property, or in stock or rights to acquire stock of the distributing corporation, then, with respect to all shareholders, the distribution of stock or rights to acquire stock is treated as a distribution of property to which section 301 applies regardless of—

(1) Whether the distribution is actually made in whole or in part in stock or in stock rights;

(2) Whether the election or option is exercised or exercisable before or after the declaration of the distribution;

(3) Whether the declaration of the distribution provides that the distribution will be made in one medium unless the shareholder specifically requests payment in the other;

(4) Whether the election governing the nature of the distribution is provided in the

declaration of the distribution or in the corporate charter or arises from the circumstances of the distribution; or

(5) Whether all or part of the shareholders have the election.

.05 Section 1.305-1(b)(2) provides that where a corporation which regularly distributes its earnings and profits, such as a regulated investment company, declares a dividend pursuant to which the shareholders may elect to receive either money or stock of the distributing corporation of equivalent value, the amount of the distribution of the stock received by any shareholder electing to receive stock will be considered to equal the amount of the money which could have been received instead.

SECTION 3. SCOPE AND APPLICATION

The Internal Revenue Service will treat a distribution of stock by a corporation that qualifies as a REIT under part II of subchapter M of the Code as a distribution of property to which section 301 applies by reason of section 305(b), and the amount of such distribution of stock will be considered to equal the amount of the money which could have been received instead, if —

(1) The distribution is made by the corporation to its shareholders with respect to its stock;

(2) Stock of the corporation is publicly traded on an established securities market in the United States;

(3) The distribution is declared with respect to a taxable year ending on or before December 31, 2009;

(4) Pursuant to such declaration each shareholder may elect to receive its entire entitlement under the declaration in either money or stock of the distributing corporation of equivalent value subject to a limitation on the amount of money to be distributed in the aggregate to all shareholders (the “Cash Limitation”), provided that—

(a) such Cash Limitation is not less than 10% of the aggregate declared distribution, and

(b) if too many shareholders elect to receive money, each shareholder electing to receive money will receive a *pro rata* amount of money corresponding to their respective entitlement under the declaration, but in no event will any shareholder

electing to receive money receive less than 10% of their entire entitlement under the declaration in money;

(5) The calculation of the number of shares to be received by any shareholder will be determined, as close as practicable to the payment date, based upon a formula utilizing market prices that is designed to equate in value the number of shares to be received with the amount of money that could be received instead. For purposes of applying subsection (4) of this Section 3, the value of the shares to be distributed shall be determined by using the formula described in the preceding sentence; and

(6) With respect to any shareholder participating in a dividend reinvestment plan

(“DRIP”), the DRIP applies only to the extent that, in the absence of the DRIP, the shareholder would have received the distribution in money under subsection (4) of this Section 3.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective with respect to distributions declared on or after January 1, 2008.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is T. Ian Russell of the Office of

Associate Chief Counsel (Corporate). For further information regarding this revenue procedure, contact T. Ian Russell at (202) 622-7550 (not a toll-free call).

Part IV. Items of General Interest

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

Announcement 2008-126

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

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on December 29, 2008, 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.

Peterson Family Foundation
Salt Lake City, UT
A1 Credit Counseling, Inc.
Ft. Smith, AR

Nat Turner Legal Defense Fund
Garland, TX
SOFLO Ballet, Inc.
Miramar, FL
Family Health Services, Inc.
Bellefonte, PA
Hometown Heroes Memorial
Organization, Inc.
Landrum, SC
ClearADebt, Inc.
Dania, FL
Rapid Hope International
Hurst, TX
Spanish Community
Yonkers, NY
All Terrier Rescue Hunters Crossing
Aloha, OR
Women Helping Women
Houston, TX
Safe Haven Homes, Inc.
Hartland, MI
AJH Housing
St. Louis, MO
Restoration & Reconciliation
Outreach, Inc.
Miami, FL
Williams Peurifoy Personal Care
Home, Inc.
Philadelphia, PA
Capital Gymnastics Booster Club, Inc.
Springfield, GA

Information Reporting for Discharges of Indebtedness; Correction

Announcement 2008-127

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final and temporary regulations (T.D. 9430, 2008-48 I.R.B. 1205) that were published in the **Federal Register** on Monday, November 10, 2008 (73 FR 66539) relating to information returns for cancellation of indebtedness by certain entities. The temporary regulations will avoid premature information reporting from certain businesses that are currently

required to report and will reduce the number of information returns required to be filed. The temporary regulations will impact certain lenders who are currently required to file information returns under the existing regulations.

EFFECTIVE DATE: This correction is effective December 11, 2008, and is applicable on November 10, 2008.

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

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under section 6050P of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (T.D. 9430) contains an error that may prove to be misleading and is in need of clarification.

* * * * *

Correction of Publication

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:
Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6050P-1T is amended by revising an entry for (a) through (b)(2)(i)(G) [Reserved] as follows:

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

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

* * * * *

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

(Filed by the Office of the Federal Register on December 10, 2008, 8:45 a.m., and published in the issue of the Federal Register for December 11, 2008, 73 F.R. 75326)

Procedure and Administration; Tax Shelter Registration; Correction

Announcement 2008–128

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to temporary regulations (T.D. 7964, 1982–2 C.B. 263) that were published in the **Federal Register** on Wednesday, August 15, 1984 (49 FR 32712) relating to tax shelter registration. In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of that issue of the **Federal Register**. Changes to the applicable tax law were made by the Tax Reform Act of 1984. The regulations affect organizers, sellers, investors and certain other persons

associated with investments that are considered tax shelters.

DATES: This correction is effective December 2, 2008, and is applicable after August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Charles D. Wien, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this document are under sections 6707 and 6111 of the Internal Revenue Code prior to The American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418), which was enacted on October 22, 2004.

Need for Correction

As published, temporary regulations (T.D. 7964) contain an error that may prove to be misleading and is in need of clarification.

* * * * *

Correction of Publication

Accordingly, 26 CFR part 301 is corrected by making the following correcting amendment:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

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

Par. 2. Section 301.6111–1T A–30 is amended by revising the first sentence to read as follows:

§ 301.6111–1T *Questions and answers relating to tax shelter registration.*

* * * * *

A–30. No. The performance of an act described in A–27 through A–29 of this section will not constitute participation in the organization or management of a tax shelter unless the person performing the act is related to the tax shelter (or any principal organizer of the tax shelter) or the person participates in the entrepreneurial risks or benefits of the tax shelter. * * *

* * * * *

Guy Traynor,
*Acting Chief, Publications
and Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).*

(Filed by the Office of the Federal Register on December 1, 2008, 8:45 a.m., and published in the issue of the Federal Register for December 2, 2008, 73 F.R. 73180)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

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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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26 CFR 40.6060-1, added; 40.6107-1, added; 40.6109-1, added; 40.6694-1 thru -4, added; 40.6695-1, added; 40.6696-1, added; 40.7701-1, added; 41.6060-1, added; 41.6107-1, added; 41.6109-2, added; 41.6694-1 thru -4, added; 41.6695-1, added; 41.6696-1, added; 41.7701-1, added; 44.6060-1, added; 44.6107-1, added; 44.6109-1, added; 44.6694-1 thru -4, added; 44.6695-1, added; 44.6696-1, added; 44.7701-1, added; 53.6060-1, added; 53.6107-1, added; 53.6109-1, added; 53.6694-1 thru -4, added; 53.6695-1, added; 53.6696-1, added; 53.7701-1, added; 54.6060-1, added; 54.6107-1, added; 54.6109-1, added; 54.6694-1 thru -4, added; 54.6695-1, added; 54.6696-1, added; 54.7701-1, added; 55.6060-1, added; 55.6107-1, added; 55.6109-1, added; 55.6694-1 thru -4, added; 55.6695-1, added; 55.6696-1, added; 55.7701-1, added; 56.6060-1, added; 56.6107-1, added; 56.6109-1, added; 56.6694-1 thru -4, added; 56.6695-1, added; 56.6696-1, added; 56.7701-1, added; 156.6060-1, added; 156.6107-1, added; 156.6109-1, added; 156.6694-1 thru -4, added; 156.6695-1, added; 156.6696-1, added;

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26 CFR 54.4980B-0, B-2, G-1, G-3, G-4, amended; 54.4980D-1, E-1, G-6, G-7, added; employer comparable contributions to health savings accounts under section 4980G, and requirement of return for filing the excise tax under section 4980B, 4980D, 4980E or 4980G (REG-120476-07) 36, 680

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26 CFR 1.512(a)-5T, amended; effective dates and other issues arising under the employee benefit provisions of the Tax Reform Act of 1984; correction to TD 8073 (Ann 99) 44, 1089

26 CFR 54.9801-1, -2, amended; 54.9811-1, added; 54.9811-1T, removed; 54.9831-1, amended; final rules for group health plans and health insurance issuers under the Newborns' and Mothers' Health Protection Act (TD 9427) 47, 1179

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26 CFR 1.6060-1, amended; 1.6107-1, revised; 1.6109-2, amended; 1.6694-0, -1, -2, revised; 1.6694-3, -4, amended; 1.6695-1, revised; 1.6695-2, amended; 1.6696-1, revised; 301.7701-15, amended; tax return preparer penalties under sections 6694 and 6695 (REG-129243-07) 27, 32

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26 CFR 25.6060-1, added; 25.6107-1, added; 25.6109-1, added; 25.6694-1 thru -4, added; 25.6695-1, added; 25.6696-1, added; 25.7701-1, added; 26.6060-1, added; 26.6107-1, added; 26.6109-1, added; 26.6694-1 thru -4, added; 26.6695-1, added; 26.6696-1, added; 26.7701-1, added; tax return preparer penalties under sections 6694 and 6695 (REG-129243-07) 27, 32

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26 CFR 1.40-1, revised; 1.40-2, added; 1.40A-1, added; 40.0-1, amended; 40.6302(c)-1, amended; 48.0-1, amended; 48.0-4, added; 48.4041-0, amended; 48.4041-18, -20, removed and reserved; 48.4041-19, revised; 48.4081-1, -2, -3, amended; 48.4081-6, removed and reserved; 48.4082-4, amended; 48.4101-1, amended; 48.6426-1 thru -7, added; 48.6427-8, amended; 48.6427-12, added; alcohol fuel and biodiesel, renewable diesel, alternative fuel, diesel-water fuel emulsion, taxable fuel definitions, excise tax returns (REG-155087-05) 38, 726; hearing scheduled (Ann 117) 49, 1258

26 CFR 1.41-6, -8, amended; 1.41-9, added; alternative simplified credit under section 41(c)(5) (REG-149405-07) 27, 73

26 CFR 1.45D-1, amended; amendments to new markets tax credit regulations (REG-149404-07) 40, 839

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26 CFR 1.108-7, amended; section 108 reduction of tax attributes for S corporations (REG-102822-08) 38, 744; hearing cancelled (Ann 116) 48, 1230

26 CFR 1.108-8, added; 1.721-1, amended; section 108(e)(8) application to partnerships (REG-164370-05) 46, 1157

26 CFR 1.147(f)-1; public approval guidance for tax-exempt bonds (REG-128841-07) 45, 1124

26 CFR 1.170-0, -2, removed; 1.170A-13, amended; 1.170A-15 thru -18, added; substantiation and reporting requirements for cash and noncash charitable contribution deductions (REG-140029-07) 40, 828; hearing scheduled (Ann 122) 51, 1351

26 CFR 1.179B-1, added; capital costs incurred to comply with EPA sulfur regulations (REG-143453-05) 32, 310; hearing cancelled (Ann 96) 43, 1010

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26 CFR 1.195-1, revised; 1.248-1, amended; 1.709-1, amended; elections regarding start-up expenditures, corporation organizational expenditures, and partnership organizational expenses (REG-164965-04) 34, 450

26 CFR 1.336-0 thru -5, added; 1.338-0, -1, -5, amended; regulations enabling elections for certain transactions under section 336(e) (REG-143544-04) 42, 947

26 CFR 1.358-6, amended; 1.367(a)-1T, (a)-3, (b)-4, (b)-6, amended; 1.367(a)-7, added; 1.1248-1, -6, -8, amended; 1.1248(f)-1, -2, -3, added; 1.6038B-1, amended; transfers by domestic corporations that are subject to section 367(a)(5), distributions by domestic corporations that are subject to section 1248(f) (REG-209006-89) 41, 867

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26 CFR 1.401(a)-13, -20, amended; 1.402(f)-1, amended; 1.411(a)-11, amended; 1.417(e)-1, amended; notice to participants of consequences of failing to defer receipt of qualified retirement plan distributions, expansion of applicable election period and period for notices (REG-107318-08) 45, 1131

26 CFR 1.401(a)(9)-1, -6, amended; 1.403(b)-6, amended; reasonable good faith interpretation of required minimum distribution rules by governmental plans (REG-142040-07) 34, 451

26 CFR 1.421-1, amended; 1.422-2, -5, amended; 1.423-1, -2, revised; employee stock purchase plans under section 423 (REG-106251-08) 39, 774; hearing scheduled (Ann 121) 50, 1296

26 CFR 1.460-3 thru -6, amended; rules for home construction contracts (REG-120844-07) 39, 770

26 CFR 1.642(c)-3, amended; 1.643(a)-5, amended; guidance under sections 642 and 643 (income ordering rules) (REG-101258-08) 28, 111; correction (Ann 73) 33, 391

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26 CFR 1.1502-13(e)(4), withdrawn; 1.1502-32(c)(1)(ii), withdrawn; unified rule for loss on subsidiary stock (REG-157711-02) 44, 1087

26 CFR 1.6039-1, revised; 1.6039-2, added; information reporting requirements under section 6039 (REG-103146-08) 37, 701; hearing scheduled (Ann 102) 43, 1011

26 CFR 1.6050P-0, -1, amended; information reporting for discharges of indebtedness (REG-118327-08) 48, 1218

26 CFR 1.6060-1, amended; 1.6107-1, revised; 1.6109-2, amended; 1.6694-0, -1, -2, revised; 1.6694-3, -4, amended; 1.6695-1, revised; 1.6695-2, amended; 1.6696-1, revised; 301.7701-15, amended; tax return preparer penalties under sections 6694 and 6695 (REG-129243-07) 27, 32; corrections (Ann 75) 33, 392

26 CFR 1.6081-2, -6, added; 54.6081-1, added; extension of time for filing returns (REG-115457-08) 33, 390; hearing scheduled (Ann 108) 46, 1165

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