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

Section 402A.—Optional Treatment of Elective Deferrals as Roth Contributions

26 CFR 1.402A–1: Designated Roth accounts.

T.D. 9324

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1 and 602

Designated Roth Accounts Under Section 402A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations under sections 401(k), 402(g), 402A, and 408A of the Internal Revenue Code (Code) relating to designated Roth accounts. These final regulations provide guidance concerning the taxation of distributions from designated Roth accounts under qualified cash or deferred arrangements under section 401(k). These final regulations will affect administrators of, employers maintaining, participants in, and beneficiaries of section 401(k) and section 403(b) plans, as well as owners and beneficiaries of Roth IRAs and trustees of Roth IRAs.

DATES: *Effective Date:* These final regulations are effective *April 30, 2007*.

Applicability Date: These regulations generally apply to taxable years beginning on or after January 1, 2007. For dates of applicability, see §§1.401(k)–1(f)(6), 1.402A–1, A–15, 1.402A–2, A–4 and 1.408A–10, A–6.

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SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations was reviewed and approved by the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number OMB–1545–1992.

The collection of information in these final regulations is in 26 CFR §1.402A–2. This information is required to comply with the separate accounting and recordkeeping requirements of section 402A. This information will be used by the IRS and employers maintaining designated Roth accounts to insure compliance with the requirements of section 402A. The collection of information is required to obtain a benefit. The likely recordkeepers are state or local governments, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

The estimated annual burden per respondent under control number OMB–1545–1992 is 2.3 hours.

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

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

Background

This document contains final regulations under section 402A, and amendments to regulations under sections 401(k), 402(g), and 408A of the Internal Revenue Code. Section 402A, which sets forth rules for designated Roth contributions, was added to the Code by section 617(a) of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 103) (EGTRRA), effective for taxable years beginning after December 31, 2005. These final regulations also reflect certain provisions of the Pension Protection Act of 2006, Public Law 109–280, (120 Stat. 780) (PPA ’06), including section 811 of PPA ’06, which repealed the sunset provisions of EGTRRA with respect to section 402A.

Section 401(k) sets forth rules for qualified cash or deferred arrangements under which an employee may make an election between cash and an employer contribution to a plan qualified under section 401(a). Section 403(b) permits a similar salary reduction agreement under which payments are made to a section 403(b) plan. Section 402(e)(3) provides that an amount is not includible in an employee’s income merely because the employee has an election whether these contributions will be made to the trust or annuity or received by the employee in cash.

Amounts contributed pursuant to these qualified cash or deferred arrangements and salary reduction agreements are defined in section 402(g)(3) as elective deferrals. Section 402(g)(1) provides a limit on the amount of elective deferrals that may be excluded from an employee’s income for a taxable year. Section 402(g)(2) provides for the distribution of elective deferrals that exceed the annual limit on elective deferrals (an excess deferral).

A designated Roth contribution is an elective deferral, as described in section 402(g)(3)(A) or (C), that has been designated by an employee, pursuant to section 402A, as not excludable from the employee’s gross income. Under section 402A(b)(2), designated Roth contributions must be maintained by the plan in a separate account (a designated Roth account).

Under section 402(a), a distribution from a plan qualified under section 401(a) is taxable under section 72 to the distributee in the taxable year distributed. However, pursuant to section 402A(d)(1), a qualified distribution from a designated Roth account is excludable from gross income. A qualified distribution is defined in section 402A(d)(2) as a distribution that is made after completion of a specified 5-year period and the satisfaction of other specified requirements.

If the distribution is not a qualified distribution, pursuant to section 72, the distribution is included in the distributee's gross income to the extent allocable to income on the contract and excluded from gross income to the extent allocable to investment in the contract (basis). The amount of a distribution allocated to investment in the contract is generally determined by applying to the distribution the ratio of the investment in the contract to the account balance.

Section 402(c) provides rules under which certain distributions from a plan qualified under section 401(a) may be rolled over into another eligible retirement plan. In such a case, the distribution is not currently includible in the distributee's gross income. Under section 402(c)(2), as amended by section 822 of PPA '06, to the extent some or all of the distribution from a plan qualified under section 401(a) would not have been includible in gross income if it were not rolled over, that portion of the distribution can only be rolled over into an individual retirement plan, or through a direct rollover to another qualified plan or section 403(b) plan that agrees to separately account for such rolled over amounts. Section 403(b)(8)(B) provides that the rules of section 402(c)(2) also apply for purposes of the rollover rules under section 403(b)(8).

Under section 402(c)(8) and 402A(c)(3), a distribution from a designated Roth account can be rolled over only to another designated Roth account or to a Roth IRA. Under section 408A, a Roth IRA is a type of individual retirement plan (IRA) under which contributions are never deductible and qualified distributions are excludable from gross income. Section 408A(d)(4) sets forth special ordering rules for the return of basis in the case of a distribution from a Roth IRA. Under the section 408A(d)(4) ordering rules, in a nonqualified distribution from a Roth IRA, basis is recovered before income.

Section 617(d) of EGTRRA amended section 6051(a)(8) to require the reporting of designated Roth contributions on Form W–2, "*Wage and Tax Statement*," and added a new subsection (f) to section 6047 to require plan administrators or other responsible persons of section 401(k) or 403(b) plans to make such returns and reports regarding designated Roth contributions to the Secretary of the Treasury and such other persons the Secretary may prescribe.

Final regulations under section 401(k) were issued on December 29, 2004 (69 FR 78144). Those final regulations reserved §1.401(k)–1(f) for special rules for designated Roth contributions. On January 3, 2006, final regulations were issued that fill in that reserved paragraph and provide additional rules applicable to designated Roth contributions (71 FR 6). The provisions of the final regulations under section 401(k) regarding designated Roth contributions do not address the taxability of distributions from designated Roth accounts or the reporting requirements that apply to contributions of designated Roth contributions or distributions from the accounts.

On January 26, 2006, a notice of proposed rulemaking (REG–146459–05, 2006–8 I.R.B. 504) under section 402A was published in the **Federal Register** (71 FR 4322). The proposed regulations also would have provided guidance with respect to designated Roth contributions under section 403(b) plans by amending the proposed regulations (REG–155608–02, 2004–2 C.B. 924) under section 403(b), published in the **Federal Register** on November 16, 2004 (69 FR 67075). This guidance has not been finalized in this Treasury Decision, but will instead be included in the final regulations under section 403(b). Written comments responding to the notice of proposed rulemaking under section 402A were received. A public hearing was held on July 26, 2006. After consideration of all comments, these final regulations adopt the provisions of the proposed regulations with certain modifications, the most significant of which are highlighted below.

These final regulations under section 402A are intended to provide comprehensive guidance on the taxation of distributions from designated Roth accounts under section 401(k) and section 403(b) plans. These regulations also provide guidance on the reporting requirements with respect to these accounts and include amendments to the provisions of the final section 401(k) regulations relating to designated Roth contributions. In addition, these final regulations include amendments to the regulations under section 402(g) issued in 1991 in order to reflect the enactment of section 402A (as well as other statutory changes since those regulations were issued) and to make changes to conform the regulations under section 402(g) to the final section 401(k) regulations. These final regulations also add a new §1.408A–10 to the existing regulations under section 408A for Roth IRAs (§1.408A–1 through 9) issued in 1999 to reflect the interaction between section 408A and section 402A.

Explanation of Provisions

Overview

These final regulations, like the proposed regulations, provide guidance on the taxation of distributions from designated Roth accounts and other related issues. A designated Roth account is a separate account under a section 401(k) plan or section 403(b) plan to which designated Roth contributions are made, and for which separate accounting of contributions, gains, and losses are maintained. These final regulations retain the rule from the proposed regulations that any transaction or accounting methodology involving an employee's designated Roth account and any other accounts under the plan or plans of an employer that has the effect of directly or indirectly transferring value from another account into the designated Roth account violates the separate accounting requirement under section 402A.

The taxation of a distribution from a designated Roth account depends on whether or not the distribution is a qualified distribution. A qualified distribution from a designated Roth account is not includible in the employee's gross income. A qualified distribution is generally a distribution that is made after a 5-taxable-year period of participation and that either (1) is made on or after the date the employee attains age 59½, (2) is made after the employee's death, or (3) is attributable to the employee's being disabled within the meaning of section 72(m)(7). In response to comments, these final regulations clarify that, in the case of distribution to an alternate payee or beneficiary, the age, death or disability of the participant are used to determine whether the distribution is qualified. The only exception is in the case of a rollover by an alternate payee or surviving spouse to a designated Roth account under a plan of his or her own employer.

Determination of 5-Taxable-Year Period for Qualified Distributions

In order for a distribution from a designated Roth account to be a qualified distribution and thus not includible in gross income, a 5-taxable-year requirement must be satisfied. These final regulations, like the proposed regulations, reflect the rule in section 402A that the 5-taxable-year period during which a distribution is not a qualified distribution begins on the first day of the employee's taxable year for which the employee first had designated Roth contributions made to the plan and ends when 5 consecutive taxable years have been completed. However, if a direct rollover is made from a designated Roth account under another plan, the 5-taxable-year period for the recipient plan begins on the first day of the employee's taxable year for which the employee first had designated Roth contributions made to the other plan, if earlier.

Commentators inquired as to when designated Roth contributions made by a reemployed veteran for a year of qualified military service pursuant to section 414(u), are treated as made for purposes of the 5-taxable-year period of participation. In response to these comments, the final regulations provide that designated Roth contributions made by a reemployed veteran are treated as made in the taxable year with respect to which the contributions relate. Reemployed veterans may identify the year for which a contribution is made for other purposes, such as for entitlement to a match, and the treatment for the five year period of participation rule follows that identification. Absent such an identification, for purposes of determining the first year of the five years of participation under section 402A(d)(2)(B), the contribution is treated as made in the veteran's first taxable year in which the veteran's qualified military service begins, or if later, the first taxable year in which designated Roth contributions could be made under the plan.

Commentators asked how the 5-taxable-year period of participation rule applies to a required minimum distribution made for an earlier year, such as a distribution made on April 1 following the year an employee attains age 70½. They also asked whether, if payments under an annuity stream commence before a qualifying event, the payments after the qualifying event could be qualified distributions (assuming the 5-year period of participation is satisfied). The determination of whether a payment is a qualified distribution is determined based upon the actual year of the payment from the account and does not take into account whether the payment is part of a series of distributions or whether the payment is attributable to a prior calendar year.

In response to comments, these final regulations provide that certain contributions do not start the 5-taxable-year period of participation. For example, a year in which the only contributions consist of excess deferrals will not start the 5-taxable-year period of participation. Further, excess contributions that are distributed to prevent an ADP failure also do not begin the 5-taxable-year period of participation. Finally, contributions returned to the employee pursuant to section 414(w) also do not start the 5-taxable-year period of participation.

Taxation of Nonqualified Distributions

These final regulations retain the rules from the proposed regulations for taxation of nonqualified distributions and provide that a distribution from a designated Roth account that is not a qualified distribution is taxable to the distributee under section 402 (or section 403(b)(1)), treating the designated Roth account as a separate contract under section 72. In applying that treatment, the portion of any distribution that is includible in gross income as an amount allocable to income on the contract and the portion not includible in income as an amount allocable to investment in the contract is generally determined under section 72(e)(8) (or, in the case of an amount received as an annuity, section 72(b) or (d), as applicable).

Some commentators requested that the special ordering rules in section 408A(d), which provide that the first distributions from a Roth IRA are a return of contributions (and thus not includible in gross income) until all contributions have been returned as basis, be applied to distributions from a designated Roth account. They noted that a *pro rata* basis recovery rule in section 72 is difficult to explain to employees receiving a hardship distribution from a designated Roth account because the entire distribution reduces the amount of elective contributions (including designated Roth contributions) available for hardship distribution while, for purposes of determining the amount includible in income under sections 402(a) and 72, only a portion of the distribution is treated as recovery of basis attributable to the designated Roth contributions.

As noted in the preamble to the proposed regulations, because section 402A does not provide that the special ordering rules of section 408A(d) apply to distributions from designated Roth accounts, these final regulations do not apply those special ordering rules. Although designated Roth contributions to a designated Roth account bear some similarity to contributions to a Roth IRA (*e.g.*, contributions to either type of account are after-tax contributions, and qualified distributions from either type of account are excludable from gross income), there are many differences between these types of arrangements. The only special rule under section 402A for nonqualified distributions from a designated Roth account is that the account is treated as a separate contract for purposes of section 72.

Thus, these final regulations do not apply the basis recovery rules in section 408A to distributions from designated Roth accounts. Furthermore, the limit on elective contributions available for hardship distribution is an aggregate limit that takes into account both pre-tax elective contributions and designated Roth contributions. For example, an employee could take all hardship distributions from the pre-tax account, even though part of the amount available for hardship is attributable to designated Roth contributions. Thus, the amount of elective deferrals available for distribution from a designated Roth account on account of hardship generally would be a different amount than the total designated Roth contributions even if the ordering rule in section 408A(d)(4) applied to distributions from designated Roth accounts.

Rollover of Designated Roth Contributions

As described above in the Background section of this preamble, section 402(c)(2), after amendment by section 822 of PPA '06, provides that, if a portion of the distribution from a plan qualified under section 401(a) is not includible in income (determined without regard to the rollover), that portion of the distribution can only be rolled over by a direct rollover of the distribution to another qualified plan, or to a section 403(b) plan, that provides for separate accounting for amounts transferred (and earnings thereon) including separate accounting for the portion of such distribution which is includible in gross income and the portion of such distribution that is not so includible. Alternatively, the distribution can be rolled over to an IRA in either a 60-day rollover or direct rollover.

Section 402A(c)(3) provides that a rollover contribution of a distribution from a designated Roth account may only be made to the extent it is otherwise allowable. Section 402(c)(2) provides rules regarding when a rollover contribution of amounts not includable in gross income are allowable. As noted in the preamble to the proposed regulations, the IRS and Treasury Department believe that the rules in section 402(c)(2) relating to the rollover of a distribution of an amount not includable in gross income apply to a distribution from a designated Roth account.[1] Thus, these regulations retain the rule in the proposed regulations that, in order to roll over any portion of the basis in a designated Roth account into a designated Roth account under another plan, the rollover of the distribution must be accomplished through a direct rollover (*i.e.*, a rollover to another designated Roth account is not available for the portion of the distribution not includible in gross income if the distribution is made directly to the employee). However, for purposes of these regulations, the requirement that the receiving plan separately account for designated Roth contributions that are rolled over has been eliminated because such contributions are independently subject to the separate account requirement of Treas. Reg. §1.401(k)–1(f).[2]

In response to comments, the final regulations clarify that, for purposes of these regulations, if any amount is paid as a direct rollover, that amount is treated as a separate distribution from any amount paid directly to the distributee for purposes of applying section 402(c)(2). Finally, to insure that there is proper accounting in the recipient plan, as described under the heading *Reporting and Recordkeeping*, these final regulations retain the provision in the proposed regulations requiring the distributing plan making the direct rollover is required to report the amount of the investment in the contract and the first year of the 5-year period to the recipient plan so that the recipient plan will not need to rely on information from the distributee.

In response to comments, the definition of designated Roth account has been revised to clarify that the definition only includes accounts under a plan to which designated Roth contributions are made in lieu of elective contributions or deferrals. Thus, the final regulations clarify that a distribution from a designated Roth account may only be rolled over to a section 401(k) plan or section 403(b) plan if that has a designated Roth program.

As in the proposed regulations, the final regulations provide that if the entire amount of a distribution from a designated Roth account is rolled over to another designated Roth account, the amount of the rollover contribution allocated to investment in the contract in the recipient designated Roth account is the amount that would not have been includible in gross income (determined without regard to section 402(e)(4)) if the distribution had not been rolled over. Thus, if an amount that is a qualified distribution is rolled over, the entire amount of the rollover contribution is allocated to investment in the contract. In response to comments, the final regulations clarify that, if the entire account balance of a designated Roth account is rolled over to another designated Roth account, and, at the time of the distribution, the investment in the contract exceeds the balance in the designated Roth account, the investment in the contract in the distributing plan is included in the investment in the contract of the recipient plan.[3]

If a distribution from a designated Roth account is made to an employee, the employee is still able to roll over the entire amount (or any portion thereof) into a Roth IRA within a 60-day period. Under section 402(c)(2), if only a portion of the distribution is rolled over, the portion that is rolled over is treated as consisting first of the amount of the distribution that is includible in gross income. These final regulations, like the proposed regulations, provide that the income limits for contributions for Roth IRAs do not apply for this purpose.

Alternatively, the proposed regulations provided that the employee is permitted to roll over the taxable portion of the distribution to a designated Roth account within a 60-day period. In such a case, additional reporting is required from the recipient plan, as described below under the heading *Reporting and Recordkeeping*. In addition, the employee's period of participation under the distributing plan is not carried over to the recipient plan for purposes of determining whether the employee satisfies the 5-taxable-year requirement under the recipient plan. Commentators objected to this different treatment for indirect rollover contributions claiming that it reduces portability. The IRS and Treasury Department believe that this rule is more consistent with the statutory language and will further encourage direct rollover of distributions from designated Roth accounts which will reduce leakage of these distributions from retirement savings solution. Thus, this rule is retained in the final regulations. However, the final regulations provide that such an indirect rollover contribution starts the 5-taxable-year period of participation under the receiving plan for a participant who has made no prior designated Roth contributions to that plan.

Determination of 5-Taxable-year Period after a Rollover to a Roth IRA

Section 402A and section 408A each provide for a 5-taxable-year period that must be completed in order for a distri-

[1] For distributions from designated Roth accounts, there is the same need for proper accounting of investment in the contract as for distributions from other accounts that include after-tax contributions. In addition, it is necessary to track whether the employee has satisfied the 5-year rule for qualified distributions.

[2] The proposed regulations would have reflected the rule in section 402(c)(2) prior to amendment by PPA '06 that limited rollovers of distributions from qualified plans that are not includible in gross income to direct rollovers to other qualified trusts and not to section 403(b) plans. These final regulations do not retain this restriction on rollovers because of the amendments to section 402(c) made by section 822 of PPA '06.

[3] If the investment in the contract exceeds the account balance and the entire account balance is distributed (and not rolled over), see Rev. Rul. 72–305, 1972–1 C.B. 116, for guidance concerning a deduction for the difference.

bution from a designated Roth account or a Roth IRA to be a qualified distribution. However, each of these sections contains different rules for determining when the 5-taxable-year requirement is satisfied. Generally, under section 402A, satisfaction of the 5-taxable-year requirement with respect to a designated Roth account under a plan is based on the years since a designated Roth contribution was first made by the employee under that plan. In contrast, the 5-year period under section 408A begins with the first taxable year for which a contribution is made to any Roth IRA.

Commentators suggested that, if a distribution from a designated Roth account to an individual is rolled into a Roth IRA, the individual receive credit under the 5-year rule in section 408A for the years since the individual first made a contribution to a designated Roth account. As noted in the preamble to the proposed regulations, the IRS and Treasury Department do not believe that the Code provides for this interaction between the two 5-year rules. Thus, these final regulations retain the rule under the proposed regulations that the 5-taxable-year period described in section 402A and the 5-taxable-year period described in section 408A(d)(2)(B) are determined independently. Thus, in the case of a rollover of a distribution from a designated Roth account maintained under a section 401(k) or 403(b) plan to a Roth IRA, the final regulations, like the proposed regulations, provide that the period that the rolled-over funds were in the designated Roth account does not count towards the 5-taxable-year period for determining qualified distributions from the Roth IRA. However, if an individual had established a Roth IRA in a prior year, the 5-year period for determining qualified distributions from a Roth IRA that began as a result of that earlier Roth IRA contribution applies to any distributions from the Roth IRA (including a distribution of an amount attributable to a rollover contribution from a designated Roth account).

If a nonqualified distribution from a designated Roth account is rolled over into a Roth IRA, the portion of the distribution that constitutes a nontaxable return of investment in the contract is treated as basis in the Roth IRA. However, the final regulations, like the proposed regulations, provide that, if a qualified distribution from a designated Roth account is rolled over into a Roth IRA, the entire amount of the distribution will be treated as basis in the Roth IRA. As a result, a subsequent distribution from the Roth IRA in the amount of the rollover would be treated as a tax-free return of basis regardless of whether the individual had maintained a Roth IRA for 5 years (although the investment return on that amount earned in the Roth IRA would not be excluded from income when distributed unless the distribution satisfied the requirements for a qualified distribution from a Roth IRA). Similar to the case of a rollover to a designated Roth account, if the entire account balance of a designated Roth account is distributed and some or all of the distribution is rolled over to a Roth IRA, and, at the time of the distribution, the investment in the contract exceeds the balance in the designated Roth account, the investment in the contract in the distributing plan is included in the amount treated as a contribution to the Roth IRA.

Certain Amounts not Qualified Distributions

Section 1.402(c)–2, A–4, provides a list of amounts that are not treated as eligible rollover distributions and are instead currently includible in income. These final regulations, like the proposed regulations, provide that these same amounts also cannot be qualified distributions. Distributions described in A–4(a) (distribution of elective deferrals in excess of the section 415 limits), (b) (corrective distribution of excess deferrals), and (c) (corrective distribution of excess contributions or excess aggregate contributions), have statutorily specified tax treatments. In the case of a deemed distribution under section 72(p) or the cost of current life insurance protection, an actual amount has not in fact been distributed. In the case of distributions of dividends deductible under section 404(k), section 72(e)(5)(D) and §1.404(k)–1T provide that these amounts are treated as paid under a separate contract providing only for payment of deductible dividends. However, if a dividend described in section 404(k) has been reinvested in accordance with section 404(k)(2)(iii)(II), then a distribution of the reinvested amount can be a qualified distribution.

In response to comments regarding hardship distributions, the final regulations clarify that an amount is not precluded from being a qualified distribution merely because it is described in section 402(c)(4) as an amount not eligible for rollover. Thus, hardship distributions and required minimum distributions are not precluded from being qualified distributions. Similarly, payments in a stream of periodic payments are not precluded from being qualified distributions merely because they are described in section 402(c)(4)(A).

Distribution of Employer Securities and NUA

The final regulations retain the rules of the proposed regulations relating to the distribution of employer securities and the application of the net unrealized appreciation election of section 402(e)(4). If a qualified distribution includes employer securities, the distribution is not includible in gross income and the basis of each security in the hands of the distributee is the fair market value of the security on the date of the distribution. In such a case, the distributee will receive capital gains treatment at the time of any future disposition of the security, to the extent of any post-distribution appreciation. If a distribution with respect to employer securities is not a qualified distribution, the rules of section 402(e)(4) apply in the same manner as to any other distribution except that the designated Roth account is treated as a separate contract.

Some commentators inquired how these rules apply to the portion of a nonqualified distribution that exceeds the basis of the employer stock at the time of the distribution to the extent not includible in gross income as a return of the employee's designated Roth contributions. As explained in Rev. Rul. 74–398, 1974–2 C.B. 136, the basis of the stock at the time of the disposition will be increased to reflect such amount, so that such amount will not be subsequently taxed as appreciation at the time of a subsequent disposition of the stock.

Annuity contracts

As noted above, in the *Overview* section of this preamble, these final regulations retain the rule from the proposed regulations that any transaction or accounting methodology involving an employee's designated Roth account and any other accounts under the plan or plans of an employer that has the effect of directly or indirectly transferring value from another account into the designated Roth account violates the separate accounting requirement under section 402A. Commentators asked for additional guidance on how this requirement is satisfied for separate accounts maintained within a single annuity contract, in particular how to allocate charges for guarantees under the contract which apply to the total of all accounts under the contract. The IRS and Treasury Department believe that it may be difficult for a single contract to have combined guarantees that apply to both accounts without the potential for a prohibited transfer of value between the accounts, and have not issued guidance on how to account for these guarantees (including related charges). However, this issue will continue to be considered by the IRS and Treasury Department. Therefore, the regulations authorize the Commissioner to provide additional guidance with respect to separate accounting within an annuity contract.

In response to comments, these final regulations clarify that, as previously indicated in §1.402(c)–2, A–10(a), a distribution of an annuity contract from a designated Roth account is not a distribution event for purposes of section 402 or 402A. Thus, in such case, only distributions from the annuity contract are treated as distributions for those purposes. The determination of whether a distribution is a qualified or nonqualified distribution is made at the time of the distribution from the contract.

Reporting and Recordkeeping

These final regulations retain the rule of the proposed regulations that the plan administrator or other responsible party with respect to a plan with a designated Roth account is responsible for keeping track of the 5-taxable-year period for each employee and the amount of designated Roth contributions made on behalf of such employee. In addition, the plan administrator or other responsible party of a plan directly rolling over a distribution is required to provide the plan administrator of the recipient plan (that is, the plan accepting the eligible rollover distribution) with a statement indicating either the first year of the 5-taxable-year period for the employee and the portion of such distribution attributable to basis or that the distribution is a qualified distribution. If the distribution is not a direct rollover to a designated Roth account under another eligible plan, the plan administrator or responsible party must provide to the employee, upon request, this same information, except the statement need not indicate the first year of the 5-taxable-year period. The statement is required to be provided within a reasonable period following the direct rollover (or employee request), but in no event later than 30 days following the direct rollover (or employee request), and the plan administrator or other responsible party for the recipient plan is permitted to rely on these statements. If this information is provided on a statement attached to the check issued to the employee, this requirement would be satisfied.

As noted in the preamble, to the extent that a portion of a distribution is includible in income (determined without regard to the rollover), if any portion of that distribution is rolled over to a designated Roth account by the distributee rather than by direct rollover, the plan administrator of the recipient plan must notify the IRS of its acceptance of the rollover contribution. The final regulations clarify that this reporting is only required to the extent provided in Forms and Instructions. Such Instructions will specify the address to which the notification must be sent and will require the following information: (1) the employee's name and social security number; (2) the amount rolled over; (3) the year in which the rollover contribution was made; and (4) such other information as the Commissioner may prescribe in order to determine that the amount rolled over is a valid rollover contribution. Thus, until relevant Forms and Instructions are released, no reporting is required.

With respect to other reporting, generally, the same reporting requirements apply to plans with designated Roth accounts as apply to other plans. A contribution to and a distribution from a designated Roth account must be reported on Form W–2 and Form 1099–R, "*Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*," respectively, in accordance with the instructions thereto. An employee has no reporting obligation with respect to designated Roth contributions under a section 401(k) or 403(b) plan. However, an employee rolling over a distribution from a designated Roth account to a Roth IRA should keep track of the amount rolled over in accordance with the instructions to Form 8606, "*Nondeductible IRAs*."

Designated Roth Contributions as Excess Deferrals

Even though designated Roth contributions are not excluded from income when contributed, they are treated as elective deferrals for purposes of section 402(g). Thus, to the extent total elective deferrals for the year exceed the section 402(g) limit for the year, the excess amount can be distributed by April 15th of the year following the year of the excess without adverse tax consequences. However, if such excess deferrals are not distributed by April 15th of the year following the year of the excess, these final regulations, like the proposed regulations, provide that any distribution attributable to an excess deferral that is a designated Roth contribution is includible in gross income (with no exclusion from income for amounts attributable to basis under section 72) and is not eligible for rollover. These regulations provide that if there are any excess deferrals that are designated Roth contributions that are not corrected prior to April 15th of the year following the excess, the first amounts distributed from the designated Roth account are treated as distributions of excess deferrals and earnings until the full amount of those excess deferrals (and attributable earnings) are distributed.

Gap Period Income

In addition, these final regulations retain the rule in the proposed regulations which reflected the statutory provisions which require that any distribution of excess deferrals include the applicable earnings from the plan. Unlike the existing final regulations under section 402(g), the earnings include income for the period after the taxable year (gap period income). The calculation of gap period income is comparable to the calculation of the gap period income for excess contributions and excess aggregate contributions under the 2004 final regulations under section 401(k) and 401(m). Thus, gap period income must be included in the distribution of excess deferrals to the extent the employee is or would be credited with allocable gain or loss on those excess deferrals for the gap period if the total account were to be distributed. This gap period income rule applies to both pre-tax excess deferrals and designated Roth contributions and continues to apply even after the 2008 elimination of the rule for excess contributions and excess aggregate contributions under section 902(e)(3) of PPA '06.

Modifications to Final Roth 401(k) Regulations

Some comments received in connection with the proposed regulations raised concerns not about those regulations but rather about the special rules for designated Roth contributions in §1.401(k)–1(f) that were finalized in T.D. 9237, 2006–6 I.R.B. 394, published on January 3, 2006 (71 FR 6). In response to those comments these final regulations make two changes to those special rules. First, these regulations clarify and expand the rule in §1.401(k)–1(f)(3)(ii) to provide that the balance of a participant's designated Roth account and a participant's other accounts under the plan are treated as accounts held under two separate plans (within the meaning of section 414(l)) for purposes of applying not only the special rule in A–11 of §1.401(a)(31)–1 for *de minimis* distributions (reasonably expected to total less than $200) but also both the automatic rollover rules for mandatory distributions under section 401(a)(31)(B) and the rules in A–9 and A–10 of §1.401(a)(31)–1 on the extent to which plans must allow split distributions. Thus, for example, if a participant has less than $1,000 in the participant's designated Roth account and less than $1,000 in the participant's other accounts, the plan will not need to provide the participant with an automatic rollover with respect to the designated Roth account or the other accounts even if the total accrued benefit of the participant under the plan exceeds $1,000.

Second, in response to comments about compensation provided to certain foreign missionaries, the regulations are modified to require that an employer treat designated Roth contribution as not excludible from gross income as elective deferrals rather than treated as includible in gross income. As a result, if section 72(f)(2) applies to a contribution, an employee will have basis as a result of the contribution to the extent that contribution would have been excludible from gross income even if paid directly to the employee and such amount can be treated as a designated Roth contribution even though such amount is income that is not includible in taxable income. Thus, compensation for foreign missionaries is not precluded from being contributed to a designated Roth account merely because the compensation would not have been includible in gross income if paid directly. Finally, the regulations clarify that, for self-employed individuals, the requirement that a designated Roth contribution not be excludible from gross income as an elective deferral for being a designated Roth contribution is only satisfied if the self-employed individual does not claim a deduction for the contribution.

Commentators inquired as to whether catch-up contributions may be designated Roth contributions. Catch-up contributions are treated the same as any other elective deferrals and, thus, a participant's catch-up contributions may either be pre-tax elective deferrals or designated Roth contributions.

Finally, these final regulations revise the special rules for designated Roth contributions in §1.401(k)–1(f) to reflect the repeal in PPA '06 of the sunset of the provisions relating to designated Roth contributions.

Effective Date

Section 402A applies to employees' taxable years beginning on or after January 1, 2006. These final regulations under section 402A are generally applicable for taxable years beginning on or after January 1, 2007. However, certain provisions in these final regulations under section 402A are applicable at the same time as section 402A. These include the clarification that the separate accounting requirement does not permit any transaction or accounting methodology that transfers value between designated Roth accounts and other accounts under a plan and the rules relating to rollovers to designated Roth accounts and Roth IRAs. Similarly, these final regulations under section 408A are applicable at the same time as section 402A. These final regulations also address the treatment of rollover contributions to Roth IRAs and designated Roth accounts.

The final regulations under section 402(g) relating to designated Roth contributions also are applicable at the same time as section 402A. Thus, these final regulations are applicable for excess deferrals for taxable years beginning on or after January 1, 2006. However, unlike the proposed regulations, the rule in these final regulations requiring distribution of gap period income on excess deferrals applies to excess deferrals for taxable years beginning on or after 2007, which are generally distributed on or after January 1, 2008.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 553(b) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that most small entities that will maintain a designated Roth account already use a third party provider to administer the plan and the collection of information in these regulations, which is required to comply with the separate accounting and recordkeeping requirements of section 402A(b), will only minimally increase the third party provider's administrative burden with respect to the plan. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are R. Lisa Mojiri-Azad, Bill Gibbs and Cathy Vohs, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.402A–1 is also issued under 26 U.S.C. 402A * * *

Par. 2. Section 1.401(k)–0 is amended as follows:

1. The entry for 1.401(k)–1(f)(2), (3), (4) and (5) are revised.

2. The entry for 1.401(k)–1(f)(6) is added.

§1.401(k)–0 Table of contents.

* * * * *

§1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(f) * * *

(1) In general.

(2) Inclusion treatment.

(3) Separate accounting required.

(4) Designated Roth contributions must satisfy rules applicable to elective contributions.

(i) In general.

(ii) Special rules for direct rollovers.

(5) Rules regarding designated Roth contribution elections.

(i) Frequency of elections.

(ii) Default elections.

(6) Effective date.

Par. 3. Section 1.401(k)–1(f) is amended as follows:

1. Revise paragraph (f)(1)(ii) and (iii).

2. Redesignate paragraph (f)(2) thru (f)(5) as (f)(3) thru (f)(6).

3. Add a new paragraph (f)(2).

4. Revise the first sentence of designated paragraph (f)(3) and add a sentence at the end.

5. Revise the last sentence of redesignated paragraph (f)(4)(ii).

6. Revise redesignated paragraph (f)(6).

The addition and revision to §1.401(k)–1 read as follows:

§1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(f) *Special rules for designated Roth contributions*.

(1) * * *

(ii) Treated by the employer as not excludible from the employee's gross income (in accordance with paragraph (f)(2) of this section);

(iii) Maintained by the plan in a separate account (in accordance with paragraph (f)(3) of this section).

(2) *Inclusion treatment*. An elective contribution is generally treated as not excludible from gross income if it is treated as includible in gross income by the employer (*e.g.*, by treating the contribution as wages subject to applicable income tax withholding). However, in the case of a self-employed individual, an elective contribution is treated as not excludible from gross income only if the individual does not claim a deduction for such amount. If an elective contribution would not have been includible in gross income if the amount had been paid directly to the employee (rather than being subject to a cash or deferral election), the elective contribution is nevertheless permitted to be a designated Roth contribution, provided the employee is entitled to treat the amount as an investment in the contract pursuant to section 72(f)(2).

(3) *Separate accounting required*. Under the separate accounting requirement of this paragraph (f)(3), contributions and withdrawals of designated Roth contributions must be credited and debited to a designated Roth account maintained for the employee and the plan must maintain a record of the employee's investment in the contract (that is, designated Roth contributions that have not been distributed) with respect to the employee's designated Roth account. * * * See A–13 of §1.402A–1 for additional requirements for separate accounting.

(4) * * *

(ii) * * * Moreover, a participant's designated Roth account and the participant's other accounts under a plan are treated as accounts held under two separate plans (within the meaning of section 414(l)) for purposes of applying the automatic rollover rules for mandatory distributions under section 401(a)(31)(B)(i)(I) and the special rules in A–9 through A–11 of §1.401(a)(31)–1.

* * * * *

(6) *Effective date*. Section 402A and the provisions of this section 1.401(k)–1(f) apply to taxable years beginning after December 31, 2005.

Par. 4. Section 1.402(g)–1 is amended as follows:

1. Revise the second sentence and add a third sentence to paragraph (a).

2. Add new paragraphs (b)(5) and (b)(6).

3. Revise paragraph (d).

4. Revise paragraph (e)(2) introductory text.

5. Revise paragraph (e)(2)(i).

6. Revise the second sentence and add a new third sentence in paragraph (e)(3)(i)(A).

7. Revise paragraph (e)(5)(i).

8. Add a sentence after the last sentence in paragraph (e)(5)(ii).

9. Revise paragraph (e)(5)(iii).

10. Add paragraph (e)(5)(v).

11. Add paragraph (e)(8)(iv).

The additions and revisions to §1.402(g)–1 read as follows:

§1.402(g)–1 Limitation on exclusion for elective deferrals.

(a) *In general*. * * * Thus, an individual's elective deferrals in excess of the applicable limit for a taxable year (that is, the individual's excess deferrals for the year) must be included in gross income for the year, except to the extent the excess deferrals are comprised of designated Roth contributions, and thus, are already includible in gross income. A designated Roth contribution is treated as an excess deferral only to the extent that the total amount of designated Roth contributions for an individual exceeds the applicable limit for the taxable year or the designated Roth contributions are identified as excess deferrals and the individual receives a distribution of the excess deferrals and allocable income under paragraph (e)(2) or (e)(3) of this section.

(b) * * *

(5) Any designated Roth contributions described in section 402A (before applying the limits of section 402(g) or this section).

(6) Any elective employer contributions to a SIMPLE retirement account, on behalf of an employee pursuant to a qualified salary reduction arrangement as described in section 408(p)(2) (before applying the limits of section 402(g) or this section).

* * * * *

(d) *Applicable limit*—(1) *In general*. Except as provided under paragraph (d)(2) of this section, the applicable limit for an individual's taxable year is the applicable dollar amount set forth in section 402(g)(1)(B). This applicable dollar amount is increased for the taxable year beginning in 2007 and later years in the same manner as the dollar amount under section 415(b)(1)(A) is adjusted pursuant to section 415(d). See §1.402(g)–2 for the treatment of catch-up contributions described in section 414(v).

(2) *Special adjustment for elective deferrals with respect to section 403(b) annuity contracts for certain long-term employees*. The applicable limit for an individual who is a qualified employee (as defined in section 402(g)(7)(C)) and has elective deferrals described in paragraph (b)(3) or (5) of this section for a taxable year is adjusted by increasing the applicable limit otherwise determined under paragraph (d)(1) of this section in accordance with section 402(g)(7).

(e) * * *

(2) *Correction of excess deferrals after the taxable year*. A plan may provide that if any amount is an excess deferral under paragraph (a) of this section:

(i) Not later than the first April 15 (or such earlier date specified in the plan) following the close of the individual's taxable year, the individual may notify each plan under which elective deferrals were made of the amount of the excess deferrals received by the plan. If any designated Roth contributions were made to a plan, the notification must also identify the extent, if any, to which the excess deferrals are comprised of designated Roth contributions. A plan may provide that an individual is deemed to have notified the plan of excess deferrals (including the portion of excess deferrals that are comprised of designated Roth contributions) to the extent the individual has excess deferrals for the taxable year calculated by taking into account only elective deferrals under the plan and other plans of the same employer and the plan may provide the extent to which such excess deferrals are comprised of designated Roth contributions. A plan may instead provide that the employer may notify the plan on behalf of the individual under these circumstances.

* * * * *

(3) * * *

(i) * * *

(A) * * * If any designated Roth contributions were made to a plan, the notification must identify the extent to which, if any, the excess deferrals are comprised of designated Roth contributions. A plan may provide that an individual is deemed to have notified the plan of excess deferrals (including the portion of excess deferrals that are comprised of designated Roth contributions) for the taxable year calculated by taking into account only elective deferrals under the plan and other plans of the same employer and the plan may provide the extent to which such excess deferrals are comprised of designated Roth contributions. * * *

* * * * *

(5) *Income allocable to excess deferrals*—(i) *General rule*. The income allocable to excess deferrals for a taxable year that begins on or after January 1, 2007 is equal to the sum of the allocable gain or loss for the taxable year of the individual and, to the extent the excess deferrals are or will be credited with gain or loss for the period after the close of the taxable year and prior to the distribution (the gap period) if the total account were to be distributed, the allocable gain or loss during that period. The income allocable to excess deferrals for a taxable year that begins before 2007 is determined using the 1.402(g)–1(e)(5) (as it appeared in the April 1, 2006 edition of 26 CFR Part 1).

(ii) *Method of allocating income*. * * * A plan will not fail to use a reasonable method for computing the income allocable to excess deferrals merely because the income allocable to excess deferrals is determined on a date that is no more than 7 days before the distribution.

(iii) *Alternative method of allocating taxable year income*. A plan may determine the income allocable to excess deferrals for the taxable year by multiplying the income for the taxable year allocable to elective deferrals by a fraction. The numerator of the fraction is the excess deferrals by the employee for the taxable year. The denominator of the fraction is equal to the sum of:

(A) The total account balance of the employee attributable to elective deferrals as of the beginning of the taxable year, plus

(B) The employee's elective deferrals for the taxable year.

* * * * *

(v) *Alternative method for allocating taxable year and gap period income*. A plan may determine the allocable gain or loss for the aggregate of the taxable year and the gap period by applying the alternative method provided by paragraph (e)(5)(iii) of this section to this aggregate period. This is accomplished by substituting the income for the taxable year and the gap period for the income for the taxable year and by substituting the elective deferrals for the taxable year and the gap period for the elective deferrals for the taxable year in determining the fraction that is multiplied by that income.

* * * * *

(8) * * *

(iv) *Distributions of excess deferrals from a designated Roth account*. The rules of paragraph (e)(8)(iii) of this section generally apply to distributions of excess deferrals that are designated Roth contributions and the attributable income. Thus, if a designated Roth account described in section 402A includes any excess deferrals, any distribution of amounts attributable to those excess deferrals are includible in gross income (without adjustment for any return of investment in the contract under section 72(e)(8)). In addition, such distributions cannot be qualified distributions described in section 402A(d)(2) and are not eligible rollover distributions within the meaning of section 402(c)(4). For this purpose, if a designated Roth account includes any excess deferrals, any distributions from the account are treated as attributable to those excess deferrals until the total amount distributed from the designated Roth account equals the total of such deferrals and attributable income.

* * * * *

Par. 5. Sections 1.402A–1 and 1.402A–2 are added to read as follows:

§1.402A–1 Designated Roth Accounts

Q–1. What is a designated Roth account?

A–1. A designated Roth account is a separate account under a qualified cash or deferred arrangement under a section 401(a) plan, or under a section 403(b) plan, to which designated Roth contributions are permitted to be made in lieu of elective contributions, that satisfies the requirements of §1.401(k)–1(f) (in the case of a section 401(a) plan).

Q–2. How is a distribution from a designated Roth account taxed?

A–2. (a) The taxation of a distribution from a designated Roth account depends on whether or not the distribution is a qualified distribution. A qualified distribution from a designated Roth account is not includible in the distributee's gross income.

(b) Except as otherwise provided in paragraph (c) of this A–2, a qualified distribution is a distribution that is both—

(1) Made after the 5-taxable-year period of participation defined in A–4 of this section has been completed; and

(2) Made on or after the date the employee attains age 59½, made to a beneficiary or the estate of the employee on or after the employee's death, or attributable to the employee's being disabled within the meaning of section 72(m)(7).

(c) A distribution from a designated Roth account is not a qualified distribution to the extent it consists of a distribution of excess deferrals and attributable income described in §1.402(g)–1(e). See A–11 of this section for other amounts that are not treated as qualified distributions, including excess contributions described in section 401(k)(8), and excess aggregate contributions described in section 401(m)(8), and income, on any of these excess amounts.

Q–3. How is a distribution from a designated Roth account taxed if it is not a qualified distribution?

A–3. Except as provided in A–11 of this section, a distribution from a designated Roth account that is not a qualified distribution is taxable to the distributee under section 402 in the case of a plan qualified under section 401(a) and under section 403(b)(1) in the case of a section 403(b) plan. For this purpose, a designated Roth account is treated as a separate contract under section 72. Thus, except as otherwise provided in A–5 of this section for a rollover, if a distribution is before the annuity starting date, the portion of any distribution that is includible in gross income as an amount allocable to income on the contract and the portion not includible in gross income as an amount allocable to investment in the contract is determined under section 72(e)(8), treating the designated Roth account as a separate contract. Similarly, in the case of any amount received as an annuity, if a distribution is on or after the annuity starting date, the portion of any annuity payment that is includible in gross income as an amount allocable to income on the contract and the portion not includible in gross income as an amount allocable to investment in the contract is determined under section 72(b) or (d), as applicable, treating the designated Roth account as a separate contract. For purposes of section 72, designated Roth contributions are described in section 72(f)(1) or 72(f)(2), to the extent applicable.

Q–4. What is the 5-taxable-year period of participation described in A–2 of this section?

A–4. (a) The 5-taxable-year period of participation described in A–2 of this section for a plan is the period of 5 consecutive taxable years that begins with the first day of the first taxable year in which the employee makes a designated Roth contribution to any designated Roth account established for the employee under the same plan and ends when 5 consecutive taxable years have been completed. For this purpose, the first taxable year in which an employee makes a designated Roth contribution is the year in which the amount is includible in the employee's gross income. Notwithstanding the preceding, however, a contribution that is returned as an excess deferral or excess contribution does not begin the 5-taxable-year period of participation. Similarly, a contribution returned as a permissible withdrawal under section 414(w) does not begin the 5-taxable-year period of participation.

(b) Generally, an employee's 5-taxable-year period of participation is determined separately for each plan (within the meaning of section 414(l)) in which the employee participates. Thus, if an employee has elective deferrals made to designated Roth accounts under two or more plans, the employee may have two or more different 5-taxable-year periods of participation, depending on when the employee first had contributions made to a designated Roth account under each plan. However, if a direct rollover contribution of a distribution from a designated Roth account under another plan is made by the employee to the plan, the 5-taxable-year period of participation begins on the first day of the employee's taxable year in which the employee first had designated Roth contributions made to such other designated Roth account, if earlier than the first taxable year in which a designated Roth contribution is made to the plan. See A–5(c) of this section for additional rules on determining the start of the 5-taxable-year of participation in the case of an indirect rollover.

(c) The beginning of the 5-taxable-year period of participation is not redetermined for any portion of an employee's designated Roth account. This is true even if the entire designated Roth account is distributed during the 5-taxable-year period of participation and the employee subsequently makes additional designated Roth contributions under the plan.

(d) The rule in paragraph (c) of this section applies if the employee dies or the account is divided pursuant to a qualified domestic relations order (QDRO), and thus, a portion of the account is not payable to the employee and is payable to the employee's beneficiary or an alternate payee. In the case of distribution to an alternate payee or beneficiary, generally, the age, death, or disability of the employee is used to determine whether the distribution to an alternate payee or beneficiary is qualified. However, if an alternate payee or a spousal beneficiary rolls the distribution into a designated Roth account in a plan maintained by his or her own employer, such individual's age, disability, or death is used to determine whether a distribution from the recipient plan is qualified. In addition, if the rollover is a direct rollover contribution to the alternate payee's or spousal beneficiary's own designated Roth account, the 5-taxable-year period of participation under the recipient plan begins on the earlier of the date the employee's 5-taxable-year period of participation began under the distributing plan or the date the 5-taxable-year period of participation applicable to the alternate payee's or spousal beneficiary's designated Roth account began under the recipient plan.

(e) If a designated Roth contribution is made by a reemployed veteran for a year of qualified military service pursuant to section 414(u) that is before the year in which the contribution is actually made, the contribution is treated as having been made in the year of qualified military service to which the contribution relates, as designated by the reemployed veteran. Reemployed veterans may identify the year of qualified military service for which a contribution is made for other purposes, such as for entitlement to a match, and the treatment for the 5-taxable-year period of participation rule follows that identification. In the absence of such designation, for purposes of determining the first year of the five years of participation under section 402A(d)(2)(B), the contribution is treated as relating to the first year of qualified military service for which the reemployed veteran could have made designated Roth contributions under the plan, or if later the first taxable year in which designated Roth contributions could be made under the plan.

Q–5. How do the taxation rules apply to a distribution from a designated Roth account that is rolled over?

A–5. (a) An eligible rollover distribution from a designated Roth account is permitted to be rolled over into another designated Roth account or a Roth IRA, and the amount rolled over is not currently includable in gross income. In accordance with section 402(c)(2), to the extent that a portion of a distribution from a designated Roth account is not includible in income (determined without regard to the rollover), if that portion of the distribution is to be rolled over into a designated Roth account, the rollover must be accomplished through a direct rollover (*i.e.*, a 60 day rollover to another designated Roth account is not available for this portion of the distribution). For this purpose, any amount paid in a direct rollover is treated as a separate distribution from any amount paid directly to the employee. If a distribution from a designated Roth account is instead made to the employee, the employee would still be able to roll over the entire amount (or any portion thereof) into a Roth IRA within the 60-day period described in section 402(c)(3).

(b) In the case of an eligible rollover distribution from a designated Roth account that is not a qualified distribution and not paid as a direct rollover contribution, if less than the entire amount of the distribution is rolled over, the part that is rolled over is deemed to consist first of the portion of the distribution that is attributable to income under section 72(e)(8).

(c) If an employee receives a distribution from a designated Roth account, the portion of the distribution that would be includible in gross income is permitted to be rolled over into a designated Roth account under another plan. In such a case, §1.402A–2, A–3, provides for additional reporting by the recipient plan. In addition, the employee's period of participation under the distributing plan is not carried over to the recipient plan for purposes of satisfying the 5-taxable-year period of participation requirement under the recipient plan. Generally, the taxable year in which the recipient plan accepts such rollover contribution is the taxable year that begins the participant's new 5-taxable-year period of participation. However, if the participant is rolling over to a plan in which the participant already has a pre-existing designated Roth account with a longer period of participation, the starting date of the recipient account is used to measure the participant's 5-taxable-year period of participation.

(d) The following example illustrates the application of this A–5:

Example. Employee B receives a $14,000 eligible rollover distribution that is not a qualified distribution from B's designated Roth account, consisting of $11,000 of investment in the contract and $3,000 of income. Within 60 days of receipt, Employee B rolls over $7,000 of the distribution into a Roth IRA. The $7,000 is deemed to consist of $3,000 of income and $4,000 of investment in the contract. Because the only portion of the distribution that could be includible in gross income (the income) is rolled over, none of the distribution is includible in Employee B's gross income.

(e) This A–5 applies for taxable years beginning on or after January 1, 2006.

Q–6. In the case of a rollover contribution to a designated Roth account, how is the amount that is treated as investment in the contract under section 72 determined?

A–6. (a) If a distribution from a designated Roth account is rolled over to another designated Roth account in a direct rollover, the amount of the rollover contribution allocated to investment in the contract in the recipient designated Roth account is the amount that would not have been includible in gross income (determined without regard to section 402(e)(4)) if the distribution had not been rolled over. Thus, if an amount that is a qualified distribution is rolled over, the entire amount of the rollover contribution is allocated to investment in the contract.

(b) If the entire account balance of a designated Roth account is rolled over to another designated Roth account in a direct rollover, and, at the time of the distribution, the investment in the contract exceeds the balance in the designated Roth account, the investment in the contract in the distributing plan is included in the investment in the contract of the recipient plan.

Q–7. After a qualified distribution from a designated Roth account has been made, how is the remaining investment in the contract of the designated Roth account determined under section 72?

A–7. (a) The portion of any qualified distribution that is treated as a recovery of investment in the contract is determined in the same manner as if the distribution were not a qualified distribution. (See A–3 of this section.) Thus, the remaining investment in the contract in a designated Roth account after a qualified distribution is determined in the same manner after a qualified distribution as it would be determined if the distribution were not a qualified distribution.

(b) The following example illustrates the application of this A–7:

Example. Employee C receives a $12,000 distribution, which is a qualified distribution that is attributable to the employee being disabled within the meaning of section 72(m)(7), from C's designated Roth account. Immediately prior to the distribution, the account consisted of $21,850 of investment in the contract (*i.e.*, designated Roth contributions) and $1,150 of income. For purposes of determining recovery of investment in the contract under section 72, the distribution is deemed to consist of $11,400 of investment in the contract [$12,000 x 21,850/(1,150 + 21,850)], and $600 of income [$12,000 x 1,150/(1,150 + 21,850)]. Immediately after the distribution, C's designated Roth account consists of $10,450 of investment in the contract and $550 of income. This determination of the remaining investment in the contract will be needed if C subsequently is no longer disabled and takes a nonqualified distribution from the designated Roth account.

Q–8. What is the relationship between the accounting for designated Roth contributions as investment in the contract for purposes of section 72 and their treatment as elective deferrals available for a hardship distribution under section 401(k)(2)(B)?

A–8. (a) There is no relationship between the accounting for designated Roth contributions as investment in the contract for purposes of section 72 and their treatment as elective deferrals available for a hardship distribution under section 401(k)(2)(B). A plan that makes a hardship distribution under section 401(k)(2)(B) from elective deferrals that includes designated Roth contributions must separately determine the amount of elective deferrals available for hardship and the amount of investment in the contract attributable to designated Roth contributions for purposes of section 72. Thus, the entire amount of a hardship distribution is treated as reducing the otherwise maximum distributable amount for purposes of applying the rule in section 401(k)(2)(B) and §1.401(k)–1(d)(3)(ii) that generally limits hardship distributions to the principal amount of elective deferrals made less the amount of elective deferrals previously distributed from the plan, even if a portion of the distribution is treated as income under section 72(e)(8).

(b) The following example illustrates the application of this A–8:

Example. The facts are the same as in the *Example* in A–7 of this section, except that instead of being disabled, Employee C is receiving a hardship distribution. In addition, Employee C has made elective deferrals that are not designated Roth contributions totaling $20,000 and has received no previous distributions of elective deferrals from the plan. The adjustment to the investment in the contract is the same as in A–7 of this section, but for purposes of determining the amount of elective deferrals available for future hardship distribution, the entire amount of the distribution is subtracted from the maximum distributable amount. Thus, Employee C has only $29,850 ($41,850 - $12,000) available for hardship distribution from C's designated Roth account.

Q–9. Can an employee have more than one separate contract for designated Roth contributions under a plan qualified under section 401(a) or a section 403(b) plan?

A–9. (a) Except as otherwise provided in paragraph (b) of this A–9, for purposes of section 72, there is only one separate contract for an employee with respect to the designated Roth contributions under a plan. Thus, if a plan maintains one separate account for designated Roth contributions made under the plan and another separate account for rollover contributions received from a designated Roth account under another plan (so that the rollover account is not required to be subject to the distribution restrictions otherwise applicable to the account consisting of designated Roth contributions made under the plan), both separate accounts are considered to be one contract for purposes of applying section 72 to the distributions from either account.

(b) If a separate account with respect to an employee's accrued benefit consisting of designated Roth contributions is established and maintained for an alternate payee pursuant to a qualified domestic relations order and another designated Roth account is maintained for the employee, each account is treated as a separate contract for purposes of section 72. The alternate payee's designated Roth account is also a separate contract for purposes of section 72 with respect to any other account maintained for that alternate payee. Similarly, if separate accounts are established and maintained for different beneficiaries after the death of an employee, the separate account for each beneficiary is treated as a separate contract under section 72 and is also a separate contract with respect to any other account maintained for that beneficiary under the plan that is not a designated Roth account. When the separate account is established for an alternate payee or for a beneficiary (after an employee's death), each separate account must receive a proportionate amount attributable to investment in the contract.

Q–10. What is the tax treatment of employer securities distributed from a designated Roth account?

A–10. (a) If a distribution of employer securities from a designated Roth account is not a qualified distribution, section 402(e)(4)(B) applies. Thus, in the case of a lump-sum distribution that includes employer securities, unless the taxpayer elects otherwise, net unrealized appreciation attributable to the employer securities is not includible in gross income; and such net unrealized appreciation is not included in the basis of the distributed securities and is capital gain to the extent such appreciation is realized in a subsequent taxable transaction.

(b) In the case of a qualified distribution of employer securities from a designated Roth account, the distributee's basis in the distributed securities for purposes of subsequent disposition is their fair market value at the time of distribution.

Q–11. Can an amount described in A–4 of §1.402(c)–2 with respect to a designated Roth account be a qualified distribution?

A–11. No. An amount described in A–4 of §1.402(c)–2 with respect to a designated Roth account cannot be a qualified distribution. Such an amount is taxable under the rules of §§1.72–16(b), 1.72(p)–1, A–11 through A–13, 1.402(g)–1(e)(8), 1.401(k)–2(b)(2)(vi), 1.401(m)–2(b)(2)(vi), or 1.404(k)–1T. Thus, for example, loans that are treated as deemed distributions pursuant to section 72(p), or dividends paid on employer securities as described in section 404(k) are not qualified distributions even if the deemed distributions occur or the dividends are paid after the employee attains age 59½ and the 5-taxable-year period of participation defined in A–4 of this section has been satisfied. However, if a dividend is reinvested in accordance with section 404(k)(2)(A)(iii)(II), the amount of such a dividend is not precluded from being a qualified distribution if later distributed. Further, an amount is not precluded from being a qualified distribution merely because it is described in section 402(c)(4) as an amount not eligible for rollover. Thus, a hardship distribution is not precluded from being a qualified distribution.

Q–12. If any amount from a designated Roth account is included in a loan to an employee, do the plan aggregation rules of section 72(p)(2)(D) apply for purposes of determining the total amount an employee is permitted to borrow from the plan, even though the designated Roth account generally is treated as a separate contract under section 72?

A–12. Yes. If any amount from a designated Roth account is included in a loan to an employee, notwithstanding the general rule that the designated Roth account is treated as a separate contract under section 72, the plan aggregation rules of section 72(p)(2)(D) apply for purposes of determining the maximum amount the employee is permitted to borrow from the plan and such amount is based on the total of the designated Roth contribution amounts and the other amounts under the plan. To the extent a loan is from a designated Roth account, the repayment requirement of section 72(p)(2)(C) must be satisfied separately with respect to that portion of the loan and with respect to the portion of the loan from other accounts under the plan.

Q–13. Does a transaction or accounting methodology involving an employee's designated Roth account and any other accounts under the plan or plans of an employer that has the effect of transferring value from the other accounts into the designated Roth account violate the separate accounting requirement of section 402A?

A–13. (a) Yes. Any transaction or accounting methodology involving an employee's designated Roth account and any other accounts under the plan or plans of an employer that has the effect of directly or indirectly transferring value from another account into the designated Roth account violates the separate accounting requirement under section 402A. However, any transaction that merely exchanges investments between accounts at fair market value will not violate the separate accounting requirement.

(b) In the case of an annuity contract which contains both a designated Roth account and any other accounts, the Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see 601.601(d)(2) of this chapter), to provide additional rules for allocation of income, expenses, gains and losses among the accounts under the contract.

(c) This A–13 applies to designated Roth accounts for taxable years beginning on or after January 1, 2006.

Q–14. How is an annuity contract that is distributed from a designated Roth account treated for purposes of section 402A?

A–14. A qualified plan distributed annuity contract within the meaning of §1.402(c)–2, A–10(a) that is distributed from a designated Roth account is not treated as a distribution for purposes of section 402 or 402A. Instead, the amounts paid under the annuity contract are treated as distributions for purposes of sections 402 and 402A. Thus, the period after the annuity contract is distributed and before a payment from the annuity contract is made is included in determining whether the five-year period of participation is satisfied. Further, for purposes of determining if a distribution is a qualified distribution, the determination of whether a distribution is made on or after the date the employee attains age 59½, made to a beneficiary or the estate of the employee on or after the employee's death, or attributable to the employee's being disabled within the meaning of section 72(m)(7) is made based on the facts at the time the distribution is made from the annuity contract. Thus for example, if an employee first makes a designated Roth contribution to a designated Roth account in 2006 at age 56, receives a distributed annuity contract within the meaning of §1.402(c)–2, A–10(a) in 2007 purchased only with assets from the designated Roth account, and then receives a distribution from the contract in 2011 at age 60, the distribution is a qualified distribution.

Q–15. When are section 402A and this §1.402A–1 applicable?

A–15. Section 402A is applicable for taxable years beginning on or after January 1, 2006. Except as otherwise provided in A–5 and A–13 of this section, the rules of this §1.402A–1 apply for taxable years beginning on or after January 1, 2007.

§1.402A–2 Reporting and recordkeeping requirements with respect to designated Roth accounts.

Q–1. Who is responsible for keeping track of the 5-taxable-year period of participation and the investment in the contract, *i.e.*, the amount of unrecovered designated Roth contributions for the employee?

A–1. The plan administrator or other responsible party with respect to a plan with a designated Roth account is responsible for keeping track of the 5-taxable-year period of participation for each employee and the amount of investment in the contract (unrecovered designated Roth contributions) on behalf of such employee. For purposes of the preceding sentence, in the absence of actual knowledge to the contrary, the plan administrator or other responsible party is permitted to assume that an employee's taxable year is the calendar year. In the case of a direct rollover from another designated Roth account, the plan administrator or other responsible party of the recipient plan can rely on reasonable representations made by the plan administrator or responsible party with respect to the plan with the other designated Roth account. See A–2 of this section for statements required in the case of rollovers.

Q–2. In the case of an eligible rollover distribution from a designated Roth account, what additional information must be provided with respect to such distribution?

A–2. (a) Pursuant to section 6047(f), if an amount is distributed from a designated Roth account, the plan administrator or other responsible party with respect to the plan must provide a statement as described below in the following situations—

(1) In the case of a direct rollover of a distribution from a designated Roth account under a plan to a designated Roth account under another plan, the plan administrator or other responsible party must provide to the plan administrator or responsible party of the recipient plan either a statement indicating the first year of the 5-taxable-year period described in A–1 of this section and the portion of the distribution that is attributable to investment in the contract under section 72, or a statement that the distribution is a qualified distribution.

(2) If the distribution is not a direct rollover to a designated Roth account under another plan, the plan administrator or responsible party must provide to the employee, upon request, the same information described in paragraph (a)(1) of this A–2, except the statement need not indicate the first year of the 5-taxable-year period described in A–1 of this section.

(b) The statement described in paragraph (a) of this A–2 must be provided within a reasonable period following the direct rollover or distributee request but in no event later than 30 days following the direct rollover or distributee request.

Q–3. If a plan qualified under section 401(a) or a section 403(b) plan accepts a 60-day rollover of earnings from a designated Roth account, what report to the IRS must be provided with respect to such rollover contribution?

A–3. To the extent required in Forms and Instructions, if a plan qualified under section 401(a), or a section 403(b) plan, accepts a rollover contribution (other than a direct rollover contribution) under section 402(c)(2), or section 403(b)(8)(B), of the portion of a distribution from a designated Roth account that would have been includable in gross income, the plan administrator or other responsible party for the recipient plan must notify the Commissioner of its acceptance of the rollover contribution no later than the due date for filing Form 1099–R, "*Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*" The Forms and Instructions will specify the address to which the notification is required to be sent and will require inclusion of the employee's name and social security number, the amount rolled over, the year in which the rollover contribution was made, and such other information as the Commissioner may prescribe in order to determine that the amount rolled over is a valid rollover contribution.

Q–4. When is this §1.402A–2 applicable?

A–4. The rules of this §1.402A–2 are applicable for taxable years beginning on or after January 1, 2007.

Par. 6. Section 1.408A–10 is added to read as follows:

§1.408A–10 Coordination between designated Roth accounts and Roth IRAs

Q–1. Can an eligible rollover distribution, within the meaning of section 402(c)(4), from a designated Roth account, as defined in A–1 of §1.402A–1, be rolled over to a Roth IRA?

A–1. Yes. An eligible rollover distribution, within the meaning of section 402(c)(4), from a designated Roth account may be rolled over to a Roth IRA. For purposes of this section, a designated Roth account means a designated Roth account as defined in A–1 of §1.402A–1.

Q–2. Can an eligible rollover distribution from a designated Roth account be rolled over to a Roth IRA even if the distributee is not otherwise eligible to make regular or conversion contributions to a Roth IRA?

A–2. Yes. An individual may establish a Roth IRA and roll over an eligible rollover distribution from a designated Roth account to that Roth IRA even if such individual is not eligible to make regular contributions or conversion contributions (as described in section 408A(c)(2) and (d)(3), respectively) because of the modified adjusted gross income limits in section 408A(b)(3).

Q–3. For purposes of the ordering rules on distributions from Roth IRAs, what portion of a distribution from a rollover contribution from a designated Roth account is treated as contributions?

A–3. (a) Under section 408A(d)(4), distributions from Roth IRAs are deemed to consist first of regular contributions, then of conversion contributions, and finally, of earnings. For purposes of section 408A(d)(4), the amount of a rollover contribution that is treated as a regular contribution is the portion of the distribution that is treated as investment in the contract under A–6 of §1.402A–1, and the remainder of the rollover contribution is treated as earnings. Thus, the entire amount of any qualified distribution from a designated Roth account that is rolled over into a Roth IRA is treated as a regular contribution to the Roth IRA. Accordingly, a subsequent distribution from the Roth IRA in the amount of that rollover contribution is not includible in gross income under the rules of A–8 of §1.408A–6.

(b) If the entire account balance of a designated Roth account is distributed to an employee and only a portion of the distribution is rolled over to a Roth IRA within the 60-day period described in section 402(c)(3), and at the time of the distribution, the investment in the contract exceeds the balance in the designated Roth account, the portion of investment in the contract that exceeds the amount used to determine the taxable amount of the distribution is treated as a regular contribution for purposes of section 408A(d)(4).

Q–4. In the case of a rollover from a designated Roth account to a Roth IRA, when does the 5-taxable-year period (described in section 408A(d)(2)(B) and A–1 of §1.408A–6) for determining qualified distributions from a Roth IRA begin?

A–4. (a) The 5-taxable-year period for determining a qualified distribution from a Roth IRA (described in section 408A(d)(2)(B) and A–1 of §1.408A–6) begins with the earlier of the taxable year described in A–2 of §1.408A–6 or the taxable year in which a rollover contribution from a designated Roth account is made to a Roth IRA. The 5-taxable-year period described in this A–4 and the 5-taxable-year period of participation described in A–4 of §1.402A–1 are determined independently.

(b) The following examples illustrate the application of this A–4:

Example 1. Employee D began making designated Roth contributions under his employer's 401(k) plan in 2006. Employee D, who is over age 59½, takes a distribution from D's designated Roth account in 2008, prior to the end of the 5-taxable-year period of participation used to determine qualified distributions from a designated Roth account. The distribution is an eligible rollover distribution and D rolls it over in accordance with sections 402(c) and 402A(c)(3) to D's Roth IRA, which was established in 2003. Any subsequent distribution from the Roth IRA of the amount rolled in, plus earnings thereon, would not be includible in gross income (because it would be a qualified distribution within the meaning of section 408A(d)(2)).

Example 2. The facts are the same as in *Example 1*, except that the Roth IRA is D's first Roth IRA and is established with the rollover in 2008, which is the only contribution made to the Roth IRA. If a distribution is made from the Roth IRA prior to the end of the 5-taxable-year period used to determine qualified distributions from a Roth IRA (which begins in 2008, the year of the rollover which established the Roth IRA) the distribution would not be a qualified distribution within the meaning of section 408A(d)(2), and any amount of the distribution that exceeded the portion of the rollover contribution that consisted of investment in the contract is includible in D's gross income.

Example 3. The facts are the same as in *Example 2*, except that the distribution from the designated Roth account and the rollover to the Roth IRA occur in 2011 (after the end of the 5-taxable-year period of participation used to determine qualified distributions from a designated Roth account). If a distribution is made from the Roth IRA prior to the expiration of the 5-taxable-year period used to determine qualified distributions from a Roth IRA, the distribution would not be a qualified distribution within the meaning of section 408A(d)(2), and any amount of the distribution that exceeded the amount rolled in is includible in D's gross income.

Q–5. Can amounts distributed from a Roth IRA be rolled over to a designated Roth account as defined in A–1 of §1.402A–1?

A–5. No. Amounts distributed from a Roth IRA may be rolled over or transferred only to another Roth IRA and are not permitted to be rolled over to a designated Roth account under a section 401(a) or section 403(b) plan. The same rule applies even if all the amounts in the Roth IRA are attributable to a rollover distribution from a designated Roth account in a plan.

Q–6. When is this §1.408A–10 applicable?

A–6. The rules of this §1.408A–10 apply for taxable years beginning on or after January 1, 2006.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In §602.101, paragraph (b) is amended by adding an entry for 1.402A–1 in numerical order to the table to read in part as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.402A–1	1545–1992
* * * * *	

Kevin M. Brown,
Deputy Commissioner for Services and Enforcement.

Approved April 23, 2007.

Eric Solomon,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on April 27, 2007, 8:45 a.m., and published in the issue of the Federal Register for April 30, 2007, 72 F.R. 21103)

Section 472.—Last-in, First-out Inventories

26 CFR 1.472–1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The March 2007 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, March 31, 2007.

Rev. Rul. 2007–34

The following Department Store Inventory Price Indexes for March 2007 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472–1(k) of the Income Tax Regulations and Rev. Proc. 86–46, 1986–2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, March 31, 2007.

In Notice 2007–44, this Bulletin, the Internal Revenue Service announced that it will discontinue publishing the BLS Department Store Inventory Price Indexes in the Internal Revenue Bulletin following the publication of the March 2007 indexes in this revenue ruling.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups — soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

	Groups	Mar. 2006	Mar. 2007	Percent Change From Mar. 2006 to Mar. 2007[1]
1.	Piece Goods	442.9	417.0	-5.8
2.	Domestics and Draperies	495.7	473.4	-4.5
3.	Women's and Children's Shoes	703.1	674.1	-4.1
4.	Men's Shoes	875.8	862.7	-1.5
5.	Infants' Wear	569.9	578.9	1.6
6.	Women's Underwear	545.6	563.5	3.3
7.	Women's Hosiery	347.3	340.0	-2.1
8.	Women's and Girls' Accessories	583.1	571.7	-2.0
9.	Women's Outerwear and Girls' Wear	367.6	381.4	3.8
10.	Men's Clothing	542.9	531.7	-2.1
11.	Men's Furnishings	571.3	578.2	1.2
12.	Boys' Clothing and Furnishings	408.0	410.6	0.6
13.	Jewelry	854.9	901.8	5.5
14.	Notions	792.2	793.1	0.1
15.	Toilet Articles and Drugs	1008.3	1014.9	0.7
16.	Furniture and Bedding	603.6	604.7	0.2
17.	Floor Coverings	619.5	609.7	-1.6
18.	Housewares	696.4	694.7	-0.2
19.	Major Appliances	204.2	211.0	3.3

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

Groups	Mar. 2006	Mar. 2007	Percent Change From Mar. 2006 to Mar. 2007[1]
20. Radio and Television	37.1	33.0	-11.1
21. Recreation and Education[2]	77.2	76.3	-1.2
22. Home Improvements[2]	139.5	141.5	1.4
23. Automotive Accessories[2]	118.4	123.2	4.1
Groups 1–15: Soft Goods	560.6	564.8	0.7
Groups 16–20: Durable Goods	374.7	372.4	-0.6
Groups 21–23: Misc. Goods[2]	93.5	94.2	0.7
Store Total[3]	495.0	497.3	0.5

[1]Absence of a minus sign before the percentage change in this column signifies a price increase.

[2]Indexes on a January 1986 = 100 base.

[3]The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is John Roman Faron of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Faron at (202) 622–4930 (not a toll-free call).

Section 482.—Allocation of Income and Deductions Among Taxpayers

26 CFR 1.482–1: Allocation of income and deductions among taxpayers.

Revenue rulings obsolete. This ruling obsoletes Rev. Rul. 74–245, 1974–1 C.B. 124, and Rev. Rul. 82–45, 1982–1 C.B. 89, which provide guidance regarding income subject to foreign legal restrictions (also known as blocked income) under section 482. Rev. Ruls. 74–245 and 82–45 obsoleted.

Rev. Rul. 2007–35

Rulings Declared Obsolete

This revenue ruling obsoletes Rev. Rul. 74–245, 1974–1 C.B. 124, and Rev. Rul. 82–45, 1982–1 C.B. 89, which provide guidance regarding income subject to foreign legal restrictions (also known as blocked income). Rev. Ruls. 74–245 and 82–45 are not considered determinative with respect to future transactions. Guidance regarding income subject to foreign legal restrictions for purposes of section 482 is provided in § 1.482–1(h)(2) of the Income Tax Regulations (T.D. 8552, 1994–2 C.B. 93, 125). Therefore, Rev. Rul. 74–351, 1974–2 C.B. 144, does not provide guidance regarding income subject to foreign legal restrictions for purposes of section 482, but may provide guidance regarding income subject to foreign legal restrictions for other purposes.

DRAFTING INFORMATION

The principal author of this revenue ruling is Keith V. Doce of the Office of Associate Chief Counsel (International). For further information regarding this revenue ruling, contact Mr. Doce at (202) 435–5265 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Credit for Alternative Fuel Vehicle Refueling Property

Notice 2007–43

SECTION 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the new qualified alternative fuel vehicle (QAFV) refueling property credit ("Refueling Property Credit") under § 30C of the Internal Revenue Code. The Internal Revenue Service and the Treasury Department expect that the regulations will incorporate the rules set forth in this notice.

SECTION 2. BACKGROUND

Section 30C provides a credit for QAFV refueling property. Section 30C(c)(1) provides that QAFV refueling property has the same meaning as under § 179A(d) (relating to the deduction allowed for qualified clean-fuel vehicle refueling property placed in service before January 1, 2006) but only with respect to the alternative fuels listed in § 30C(c)(1). The credit is available for property that a taxpayer places in service as QAFV refueling property after December 31, 2005, and on or before December 31, 2009 (December 31, 2014, in the case of property relating to hydrogen).

SECTION 3. SCOPE

This notice provides guidance relating to the computation of the Refueling Property Credit and the treatment for purposes of the credit of converted and dual-use refueling property. This notice does not address: (1) the rule under § 30C(d)(2) preventing the credit from being used to reduce alternative minimum tax liability; or (2) the rule under § 30C(e)(5) requiring recapture of the credit under certain circumstances. The Internal Revenue Service and Treasury Department expect to issue separate guidance relating to these, and other, issues under § 30C.

SECTION 4. DEFINITIONS AND CROSS REFERENCES TO APPLICABLE REGULATIONS

.01 *Definitions*. The following definitions apply for purposes of this notice:

(1) *QAFV refueling property*. QAFV refueling property is any property (other than a building or its structural components) that meets the following requirements:

(i) The property is not used predominantly outside the United States (or, in the case of property described in § 168(g)(4)(G), is property used predominantly in a U.S. possession).

(ii) The property is of a character subject to the allowance for depreciation or is installed on property that is used as the taxpayer's principal residence (within the meaning of § 121)).

(iii) The original use of the property begins with the taxpayer.

(iv) The property is used for—

(a) Storing alternative fuel at the point where the fuel is delivered into the fuel tank of a motor vehicle that is propelled by such fuel; or

(b) Dispensing alternative fuel at such point into the fuel tank of a motor vehicle that is propelled by such fuel.

(2) *Dual-use property*. Dual-use property is refueling property that is used—

(a) To store and/or dispense both alternative fuel and conventional fuel; or

(b) Both to store alternative fuel that is dispensed into the fuel tanks of motor vehicles at the location of the storage facility and to store alternative fuel that is transported to other locations.

(3) *Alternative fuel*. A fuel is an alternative fuel if—

(i) At least 85 percent of its volume consists of one or more of the following: ethanol, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen; or

(ii) It is a qualifying biodiesel mixture.

(4) *Qualifying biodiesel mixture*. A fuel is a qualifying biodiesel mixture if it is a mixture of biodiesel (as defined in § 40A(d)(1)) and diesel fuel (as defined in § 4083(a)(3)) and the mixture contains at least 20 percent biodiesel. For this purpose, any kerosene in a mixture—

(i) Is disregarded in determining whether the mixture is a mixture of biodiesel and diesel fuel; and

(ii) Is taken into account in determining whether the mixture contains at least 20 percent biodiesel.

(5) *Conventional fuel*. Conventional fuel is any fuel that is not an alternative fuel. Conventional fuel includes diesel fuel that is not in a qualifying biodiesel mixture and gasoline.

(6) *Conventional refueling property*. Conventional refueling property is property that is used to dispense or store only conventional fuel.

(7) *Fuel tank*. The fuel tank of a motor vehicle that is propelled by alternative fuel includes only the tank that supplies fuel to the propulsion engine of the vehicle.

.02 *Cross References to Applicable Regulations*. The following provisions of the Income Tax Regulations (26 CFR Part 1) apply for purposes of this notice:

(1) *Building and structural components*. Whether property is a building or a structural component of a building is determined under the principles of § 1.48–1(e).

(2) *Original use*. Whether the original use of property begins with the taxpayer is determined under the principles of § 1.48–2.

(3) *Placed in service*. The year in which property is placed in service and whether the property is placed in service as QAFV refueling property are determined under the principles of § 1.46–3(d).

(4) *Subject to allowance for depreciation*. Whether property is of a character subject to the allowance for depreciation is determined under the principles of § 1.48–1(b).

(5) *Use outside the United States*. Whether property is used predominantly outside the United States is determined under the principles of § 1.48–1(g).

SECTION 5. COMPUTATION OF CREDIT

.01 *In General*. The Refueling Property Credit is equal to 30 percent of the cost of any property that the taxpayer places in service as QAFV refueling property during the taxable year. The credit is limited to $30,000 per property for property of a character subject to the allowance for depreciation and $1,000 per property for other property. (A proposed technical correction would retroactively change this rule so that a single limitation of $30,000 or $1,000 (depending on whether the property is of a character subject to the allowance for depreciation) applies to all QAFV refueling property placed in service at a location during a taxable year.)

.02 *Cost of QAFV Refueling Property*. The cost of QAFV refueling property is determined under the principles of § 1.46–3(a) and (c) and the following rules:

(1) The cost of QAFV refueling property includes all costs that are required under federal tax principles to be capitalized as a cost of the QAFV refueling property. These costs include the cost of acquiring or constructing the QAFV refueling property or of converting conventional refueling property into QAFV refueling property.

(2) The cost of QAFV refueling property does not include costs that are properly allocable to land or to a building and its structural components. Costs properly allocable to land include, but are not limited to, costs related to the acquisition of land on which the QAFV refueling property is located and expenses for permits, legal fees, project management, or engineering to the extent such expenses are related to the land.

(3) The cost of QAFV refueling property does not include any amount that is taken into account under § 179 (relating to the election to expense certain depreciable business assets).

SECTION 6. CONVERTED AND DUAL-USE PROPERTY

.01 *Converted Refueling Property*.

(1) *In general*. The rules in this section 6.01 apply solely with respect to converted QAFV refueling property. For this purpose, converted QAFV refueling property is QAFV refueling property that was converted from property (including conventional refueling property) that is not QAFV refueling property (non-QAFV property).

(2) *Reconditioned or rebuilt property*. If converted QAFV refueling property is treated under the principles of § 1.48–2 as reconditioned or rebuilt property, the cost of the QAFV refueling property includes the cost of reconditioning or rebuilding the non-QAFV property, but does not include the basis of the non-QAFV property.

(3) *Use as QAFV refueling property treated as original use*. If converted QAFV refueling property, including any parts that were non-QAFV property before the conversion, is treated under the principles of § 1.48–2 as being put to original use when first used as QAFV refueling property, the cost of the QAFV refueling property includes both the adjusted basis of the non-QAFV property immediately before the conversion and the cost of the conversion.

.02 *Dual-Use Property*.

(1) *In general*. In the case of dual-use property that is used to store and/or dispense both alternative fuel and conventional fuel, the cost of the dual-use property is taken into account in computing the Refueling Property Credit only to the extent such cost exceeds the cost of equivalent conventional refueling property. For this purpose, equivalent conventional refueling property is conventional refueling property that is not used to store and/or dispense alternative fuel, but is otherwise comparable to the dual-use property and can store and/or dispense the same amount of conventional fuel as the dual-use property.

(2) *Storage facilities*. In the case of dual-use property that is used both to store alternative fuel that is dispensed into the fuel tanks of motor vehicles at the location of the storage facility and to store fuel that is transported to other locations, the cost of the dual-use property is taken into account in computing the Refueling Property Credit only to the extent such cost exceeds the cost of a storage facility that is equivalent to the dual-use property except that it is used for the sole purpose of storing alternative fuel that is transported to other locations and can store the same amount of alternative fuel as the dual-use property stores for transport to other locations.

SECTION 7. EXAMPLES

.01 *Example 1*. (i) *X* , a fuel wholesaler, acquires an additional storage tank to store alternative fuel at its principal place of business and a fuel tanker truck to transport the alternative fuel from its principal place of business to the retail service stations of *X*'s customers. The fuel tanker truck dispenses alternative fuel into storage tanks at the retail service stations but is not used to dispense the alternative fuel into the fuel tanks of motor vehicles that are propelled by the alternative fuel.

(ii) Neither the storage tank nor the fuel tanker truck is QAFV refueling property within the meaning of section 4.01(1) of this notice. The storage tank is used to store alternative fuel, but it does not store the fuel at the point where the fuel is delivered into the fuel tank of a motor vehicle that is propelled by alternative fuel within the meaning of section 4.01(7) of this notice. Similarly, the fuel tanker truck is used to dispense alternative fuel, but it does not dispense the fuel into the fuel tank of a motor vehicle that is propelled by alternative fuel.

.02 *Example 2*. (i) The facts are the same as in *Example 1*, except that *X* also acquires a pump that is used to dispense alternative fuel from the storage tank into the fuel tanks of *X*'s fuel tanker trucks. The storage tank has the same capacity as the tank that would have been used for the sole purpose of storing the alternative fuel that is supplied to *X*'s customers.

(ii) The pump is QAFV refueling property within the meaning of section 4.01(1) of this notice because it is used to dispense alternative fuel into the fuel tanks of *X*'s fuel tanker trucks. Accordingly, the cost of the pump is taken into account in determining *X*'s Refueling Property Credit.

(iii) The storage tank is also QAFV refueling property because it is used to store alternative fuel at the point where the fuel is delivered into the fuel tanks of the fuel tanker trucks. In addition, however, the storage tank is dual-use property described in section 6.02(2). Under section 6.02, the cost of the storage tank is taken into account in computing the Refueling Property Credit only to the extent that cost exceeds the cost of the storage tank that would have been used for the sole purpose of storing the alternative fuel that is supplied to *X*'s customers. Because no increase in the capacity of the storage tank is needed, none of the storage tank's cost is taken into account in computing the amount of the Refueling Property Credit.

.03 *Example 3*. (i) *Y* is a retail seller of gasoline. In Year 1, *Y* acquires and places in service conventional refueling property consisting of a gasoline storage tank. *Y* claims the allowable depreciation deduction with respect to the gasoline storage tank on its federal income tax return for Year 1. In Year 2, *Y* incurs costs of $10,000 to convert the gasoline storage tank into an alternative fuel storage tank and begins using the converted property as QAFV refueling property.

(ii) If, under the principles of § 1.48–2, the storage tank is treated as reconditioned or rebuilt property, only the $10,000 incurred to convert the gasoline tank into QAFV refueling property is taken into account for purposes of determining *Y*'s Refueling Property Credit for Year 2. If, on the other hand, the converted storage tank is treated, under the principles of § 1.48–2, as being put to original use when first used as QAFV refueling property, the adjusted basis of the storage tank immediately before its conversion into QAFV refueling property also is taken into account for purposes of determining the credit.

SECTION 8. RECORDKEEPING

Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. The books and records required by § 6001 must be kept at all times available for inspection by authorized internal revenue officers or employees, and must be retained so long as the contents thereof may become material in the administration of any internal revenue law. Section 1.6001–1(e) of the Procedure and Administration Regulations. In order to satisfy the recordkeeping requirements of § 6001 and the regulations thereunder, a taxpayer that claims the Refueling Property Credit must retain adequate books and records so that, for any taxable year, it can be verified from those books and records that the fuel that is dispensed and/or stored meets the definition of alternative fuel contained in § 30C(c)(1)(A) or (B) and section 4.01(3) of this notice, and that the refueling property otherwise meets the requirements of § 30C and this notice.

SECTION 9. EFFECTIVE DATE

This notice is effective for QAFV refueling property placed in service after December 31, 2005, and on or before December 31, 2009 (December 31, 2014, in the case of property relating to hydrogen).

SECTION 10. DRAFTING INFORMATION

The principal author of this notice is Nicole R. Cimino of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Cimino at (202) 622–3120 (not a toll-free call).

Department Store Inventory Price Indexes Published by the Bureau of Labor Statistics for Use With the Retail and LIFO Inventory Methods

Notice 2007–44

PURPOSE

This notice informs taxpayers that the Internal Revenue Service will no longer publish the Department Store Inventory Price Indexes prepared by the United States Bureau of Labor Statistics (BLS) in the Internal Revenue Bulletin but will continue to accept the BLS Department Store Inventory Price Indexes for use by department stores employing the last-in, first-out (LIFO) inventory identification method in conjunction with the retail method of valuing inventories.

BACKGROUND

The BLS prepares and publishes monthly Department Store Inventory Price Indexes, designed to measure changes in the retail prices for merchandise carried by department stores. The indexes are determined on a national basis and include 23 major groups of departments, three special combinations of those major groups, and store totals. Each month, the Service reproduces the BLS Department Store Inventory Price Indexes and accepts those indexes in accordance with § 1.472–1(k) of the Income Tax Regulations and Rev. Proc. 86–46, 1986–2 C.B. 739, for use by department stores employing the LIFO inventory identification method in conjunction with the retail method of valuing inventories, in a revenue ruling published in the Internal Revenue Bulletin.

APPLICATION

The Internal Revenue Service will discontinue republishing the BLS Department Store Inventory Price Indexes in the Internal Revenue Bulletin after the publication of the March 2007 indexes in Rev. Rul. 2007–34, this Bulletin. Although the BLS Department Store Inventory Price Indexes will no longer be published in the Internal Revenue Bulletin, the monthly indexes that are applicable to the goods in question will continue to be accepted by the Service under § 1.472–1(k) and Rev. Proc. 86–46, for appropriate application to inventories of department stores employing the retail and LIFO inventory methods in valuing inventories for tax years ended with, or with reference to, the last day of the applicable month.

The most current monthly BLS Department Store Inventory Price Indexes are available on the BLS website at the Consumer Price Indexes (CPI) page at *www.bls.gov/cpi*, in the "Tables Created by BLS" section under "Tables and publications containing Consumer Price Indexes" at "Department Store Inventory Price Indexes *** (PDF)." The BLS Department Store Inventory Price Indexes for prior months are also available on the BLS website at the CPI page (*www.bls.gov/cpi*) in the "Get Detailed CPI Statistics" section under "Create Customized Tables (one screen)" at "Department Store Inventory Price Index." In addition, directions and links to the BLS Department Store Inventory Price Indexes on the BLS website are available on the Internal Revenue Service website at *www.irs.gov*, in the "Tax Professionals" section, under "Resources for Tax Pro" and "Tax Law Issues, Nibbles and Bytes," at "BLS Department Store Inventory Price Indexes."

EFFECT ON OTHER DOCUMENTS

Rev. Proc. 86–46 is modified.

DRAFTING INFORMATION

The principal author of this notice is John Roman Faron of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Mr. Faron at (202) 622–4930 (not a toll-free call).

Guidance Regarding Public Inspection of Unrelated Business Income Tax Returns

Notice 2007–45

SECTION 1. PURPOSE

This notice provides interim guidance on section 6104(d)(1)(A)(ii) of the Internal Revenue Code (the Code), which was added by section 1225 of the Pension Protection Act of 2006, Pub. L. No. 109–280, 120 Stat. 780 (2006) (the PPA). This provision imposes a new requirement on all organizations exempt from Federal income tax under section 501(a) of the Code and described in section 501(c)(3) (charities) to make available for public inspection a copy of any annual return filed under section 6011 relating to the tax imposed under section 511. The annual return subject to this public disclosure requirement is filed on Form 990–T, *Exempt Organization Business Income Tax Return*. The requirement applies to any Form 990–T filed by a charity with the IRS after August 17, 2006.

The Internal Revenue Service (IRS) and the Treasury Department expect to revise the regulations under section 6104(d) of the Code to take account of the change to the statute. Until those revised regulations are effective, charities may rely on this notice to comply with section 6104(d)(1)(A)(ii).

SECTION 2. BACKGROUND

Section 6104(d) of the Code requires tax-exempt organizations to make available for public inspection and copying certain annual returns, reports, applications for recognition of exemption, and notices of status. The annual returns must be made available by an organization for inspection during regular business hours by any individual at the principal office of such organization and, if such organization regularly maintains one or more regional or district offices having three or more employees, at each such regional or district office. Also, an organization must provide, upon request of an individual made at such principal office or such a regional or district office, copies of annual returns to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

Prior to the passage of the PPA, annual returns filed under section 6011 relating to the tax imposed under section 511 were not subject to the requirements of section 6104(d). Following enactment of section 6104(d)(1)(A)(ii) in the PPA, the Code requires charities to make available for public inspection and copying by any individual a copy of annual returns the charity files under section 6011 that relate to any tax imposed by section 511. Therefore, except as provided in this notice, the requirements of section 6104(d) apply to any Form 990–T a charity files with the IRS after August 17, 2006.

Section 501(a) of the Code provides for the exemption from Federal income tax for organizations described in section 501(c). Section 501(c)(3) describes organizations that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. Section 511(a), in part, imposes a tax for each taxable year on the unrelated business taxable income of any charity, any college or university described in section 511(a)(2)(B), and any corporation wholly owned by one or more such colleges or universities. A college or university is described in section 511(a)(2)(B) if it is an agency or instrumentality of any government or any political subdivision thereof, or is owned or operated by any government or any political subdivision thereof, or by any agency or instrumentality of one or more governments or political subdivisions (state colleges and universities). Section 115(1) of the Code provides that gross income does not include income that is derived from a public utility or from the exercise of any essential governmental function, and accruing to a State or any political subdivision thereof.

Section 301.6104(d)–1 of the Procedure and Administration Regulations sets forth general guidance on making annual returns available for public inspection. Section 301.6104(d)–2 describes how a tax-exempt organization can make its annual return widely available and, therefore, not subject to the requirement to provide copies in response to individual requests, although the regulation stipulates that the organization still must make the annual return available for public inspection. Section 301.6104(d)–3 addresses the standards that apply in determining whether a tax-exempt organization is the subject of a harassment campaign, such that it may, under applicable procedures, obtain relief from the requirement that copies be provided in response to individual requests.

Under section 6652(c)(1)(C) of the Code, a penalty may be imposed on any person for failure to make available for public inspection and copying a copy of Form 990–T. The penalty is payable by the person who fails to comply with the requirements of section 6104(d). The penalty is $20 on each person for each day that the failure continues, not to exceed $10,000 on all persons with respect to any one return. Additionally, a penalty under section 6685 of the Code for willful failure to comply with the requirements of section 6104(d), and a penalty under section 7207 for willfully furnishing fraudulent or false information, may apply.

SECTION 3. INTERIM GUIDANCE

The IRS and the Treasury Department expect to revise regulations under section 6104(d) of the Code to include the new requirements under section 6104(d)(1)(A)(ii). Until the revised regulations are effective, charities may rely on sections 301.6104(d)–1, 301.6104(d)–2, and 301.6104(d)–3 of the regulations, except as otherwise provided in this notice, for guidance on how to comply with section 6104(d)(1)(A)(ii).

Pursuant to this notice, all charities that file Form 990–T are required to make the return public, regardless of whether the charity is otherwise subject to the disclosure requirements of section 6104. For example, although churches are not required to file Form 1023 or Form 990 with the IRS, they are required to file the Form 990–T with the IRS to report unrelated business taxable income. Thus, churches are required, under this notice, to disclose Form 990–T to the public.

In addition, this notice clarifies the application of the statute to state colleges and universities (and their wholly owned corporations). State colleges and universities are generally eligible to exclude their income from gross income under section 115 of the Code. The application of section 115 effectively provides an exemption from income tax. A state college or university may also be exempt from income tax under section 501(a) as an organization described in section 501(c)(3) if it applies for and receives a determination letter in accordance with section 508 of the Code. The exclusion from gross income under section 115 applies regardless of whether the state or college or university elects to apply for a determination letter. Nonetheless, some state colleges and universities may seek exemption under section 501(a) as well in order to be listed in IRS Publication 78, which many donors and grantmakers use to confirm that an organization is eligible to receive deductible contributions under section 170. State colleges and universities (and their wholly-owned corporations) that rely solely on section 115 to relieve them of liability for income tax are nonetheless subject to UBIT under section 511(a)(2)(B). State colleges and universities (and their wholly-owned corporations) that receive determination letters confirming that they are exempt under section 501(a) as organizations described in section 501(c)(3) are subject to UBIT under section 511(a)(2)(A), and possibly also under section 511(a)(2)(B).

Section 6104(d)(1)(A)(ii), as enacted, requires disclosure by all organizations that are exempt from tax under section 501(a) that are described in section 501(c)(3). The statute does not provide an exception for organizations that also benefit from the income exclusion provided by section 115. Thus, the statute requires that state colleges and universities that have been recognized by the IRS as exempt under section 501(a) as organizations described in section 501(c)(3), disclose Form 990–T to the public. However, the statute does not require state colleges and universities that are subject to tax under section 511(a) solely by virtue of section 511(a)(2)(B), and that have not been recognized by the IRS as exempt under section 501(a) as organizations described in section 501(c)(3), to make public their Forms 990–T.

The guidelines on making annual returns available for public inspection set forth in section 301.6104(d)–1 of the regulations generally apply, except that for purposes of section 6104(d)(1)(A)(ii), the definition of "annual information return" in section 301.6104(d)–1(b)(4)(i) includes an exact copy of the Form 990–T filed by a charity with the IRS after August 17, 2006, including all schedules, attachments, and supporting documents, and the exclusion of the Form 990–T from that definition in section 301.6104(d)–1(b)(4)(ii) does not apply.

Charities that make their Form 990–T widely available in accordance with the provisions in section 301.6104(d)–2 of the regulations do not need to comply with an individual request for a copy of such return, though they still must make such return available for public inspection. The widely available exception requires that the Form 990–T be posted in a format that exactly reproduces the image of the return as it was originally filed with the IRS after August 17, 2006, including all schedules, attachments, and supporting documents. For instance, the organization will be treated as having made its Form 990–T for a given year widely available if it posts its Form 990–T as a PDF file on the organization's website.

The provisions of section 301.6104(d)–3 are applicable to a request for a charity's Form 990–T that is part of a harassment campaign. An organization that believes that the requests for Form 990–T are part of a single coordinated effort to disrupt the operations of the tax-exempt organization, rather than to collect information about the organization, may apply for a determination from the IRS that the organization is the subject of a harassment campaign and suspend compliance with the requests for copies of Form 990–T, provided that it files the request for determination with 10 business days of the suspension. The IRS's determination that the organization is the subject of a harassment campaign allows an organization not to comply with any requests for copies of Form 990–T that it reasonably believes are part of the campaign.

SECTION 4. EXCEPTION WHERE FORM 990–T USED SOLELY TO REQUEST TELEPHONE EXCISE TAX REFUND

For 2006, exempt organizations must use Form 990–T if they wish to request a refund of telephone excise tax paid after February 28, 2003, and before August 6, 2006. See Notice 2006–50, 2006–25 I.R.B. 1141, for more information regarding the telephone tax refund.

A charity that files a Form 990–T solely to request a refund of the federal telephone excise tax is not required to make that Form 990–T available for public inspection and copying. However, if a charity files a Form 990–T to request a refund of the federal telephone excise tax and to report unrelated business taxable income under section 511, the charity is required to make that Form 990–T available for public inspection and copying in its entirety.

SECTION 5. REQUEST FOR COMMENTS

The IRS and the Treasury Department invite comments on implementation of the public inspection requirement of section 6104(d)(1)(A)(ii). Comments are requested specifically on the application of the public inspection requirement of section 6104(d)(1)(A)(ii) to organizations that are exempt from Federal income tax under section 501(a) and described in section 501(c)(3), that may also exclude their income from gross income under section 115(1) or other legal principles.

Comments should refer to Notice 2007–45 and be submitted by June 30, 2007, to:

Internal Revenue Service
CC:PA:LPD:PR (Notice 2007–45)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4:00 p.m. to:

Courier's Desk
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224
Attn: CC:PA:LPD:PR
(Notice 2007–45)

Alternatively, taxpayers may submit comments electronically to *notice.comments@irscounsel.treas.gov*. Please include "Notice 2007–45" in the subject line of any electronic communications.

All comments will be available for public inspection and copying.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Mary Jo Salins of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this notice, contact Ms. Salins at (202) 283–9453 (not a toll-free call).

Gaming Industry Tip Compliance Agreement Program

Rev. Proc. 2007–32

SECTION 1. PURPOSE

The Gaming Industry Tip Compliance Agreement Program (GITCA Program) is designed to promote compliance by gaming industry employers and employees with the provisions of the Internal Revenue Code relating to tip income and to reduce disputes under section 3121(q).

The GITCA Program was established by Revenue Procedure 2003–35, 2003–1 C.B. 919, in May 2003. This revenue procedure provides an updated model Gaming Industry Tip Compliance Agreement for use by the Internal Revenue Service and gaming industry employers. The new model agreement has been revised to enhance administration of the GITCA Program by both the employers and the Service and to facilitate and promote the use of current financial information technology in the tip reporting process.

SECTION 2. OVERVIEW

Under the GITCA Program, a gaming industry employer and the Internal Revenue Service work together to reach a Gaming Industry Tip Compliance Agreement that establishes minimum tip rates for tipped employees in specified occupational categories, prescribes a threshold level of participation by the employer's employees, and reduces compliance burdens for the employer and enforcement burdens for the Service.

SECTION 3. EMPLOYER PARTICIPATION

.01 With the consent of the Service, all employers operating a gaming establishment may participate in the GITCA Program. Either the Service or an employer may suggest the employer's potential participation in the program.

.02 The Service's decision to refuse participation by any employer in this program is not subject to review.

SECTION 4. GAMING INDUSTRY TIP COMPLIANCE AGREEMENTS

.01 To participate in this program, an employer must execute a Gaming Industry Tip Compliance Agreement. The Gaming Industry Tip Compliance Agreement shall conform to all requirements of this revenue procedure and will use the form appended to this revenue procedure as Exhibit 1.

.02 An executed Gaming Industry Tip Compliance Agreement shall supersede all existing tip compliance agreements between an employer and the Service. A gaming industry employer under any existing tip compliance agreement with the Service, including a Tip Rate Determination Agreement, may request to change to a Gaming Industry Tip Compliance Agreement.

.03 In general, Gaming Industry Tip Compliance Agreements shall be for a term of three years. For new properties and for properties that do not have a prior agreement with the Service, however, the initial term of the Agreement may be for a shorter period.

.04 All Gaming Industry Tip Compliance Agreements may be renewed for additional terms of up to three years, in accordance with Section IX of the model Gaming Industry Tip Compliance Agreement. Beginning not later than six months prior to the termination date of a Gaming Industry Tip Compliance Agreement, the Service and the employer shall commence discussions as to any appropriate revisions to the agreement, including any appropriate revisions to the tip rates described in Section VIII of the model Gaming Industry Tip Compliance Agreement. In the event that the Service and the employer have not reached final agreement on the terms and conditions of a renewal agreement, the parties may, by mutual agreement, extend the existing agreement for an appropriate time to finalize and execute a renewal agreement.

.05 Decisions regarding renewal of a Gaming Industry Tip Compliance Agreement are not subject to review.

SECTION 5. DEEMED COMPLIANCE WITH SECTION 6053

An employer who complies with the reporting requirements of Section V of its Gaming Industry Tip Compliance Agreement, and participating employees of the employer who report in accordance with the agreement, will be deemed to be in compliance with the reporting requirements of section 6053 of the Internal Revenue Code for the taxable periods during which the agreement remains in effect.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective May 2, 2007.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 2003–35 is superseded. All Gaming Industry Tip Compliance Agreements executed pursuant to Revenue Procedure 2003–35 will remain in effect until the expiration date set forth in that Agreement, unless superseded by the execution of a Gaming Industry Tip Compliance Agreement under section 4.02 of this revenue procedure.

SECTION 8. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1530. This control number was received under preceding Revenue Procedure 2003–35 and was renewed in June 2006. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in the section titled GAMING INDUSTRY TIP COMPLIANCE AGREEMENTS. This information is required to evaluate the suitability of the GITCA Program for the particular taxpayer and to assess the validity of the proposed tip rates. The collection of information is required to obtain the benefits described in this revenue procedure. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting burden under this revenue procedure has been reduced from the burden under Revenue Procedure 2003–35. Under this revenue procedure, the estimated total annual reporting burden is 5,000 hours.

The estimated annual burden per respondent is an average of 10 hours, depending on individual circumstances. The estimated number of respondents is 500.

The estimated frequency of responses is 1 time per year per respondent.

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

SECTION 9. DRAFTING AND CONTACT INFORMATION

The principal author of this revenue procedure is Jason Spitzer of the Office of Associate Chief Counsel (Procedure & Administration). For further information about this revenue procedure, contact Jason Spitzer at (202) 622–7950 (not a toll-free number) or by email at *jason.a.spitzer@irscounsel.treas.gov*. For inquiries into participating in the GITCA Program or for questions about the program, contact the office of the Chief, Employment Tax, Specialty Programs, at 202–283–2438 (not a toll-free number).

Exhibit 1

Gaming Industry Tip Compliance Agreement

I. PARTIES

The parties to this Agreement are ________________________________ (hereinafter "Employer") and the Commissioner of the Internal Revenue Service (hereinafter "Service"; collectively "the Parties"). This Agreement will establish tip rates for all Participating Employees of the Employer. This Agreement is pursuant to Revenue Procedure 2007–XX.

II. APPENDICES

The Parties have agreed to:

A. The Occupational Categories, shifts, outlets, and tip rates for all participating employees of the Employer, set forth in Appendix A;

B. A Narrative Summary of Tip Rate Calculation Methodology (specific to the Employer), set forth in Appendix B;

C. The Model Gaming Employee Tip Reporting Agreement, set forth in Appendix C;

D. The Model Extension Agreement set forth in Appendix D;

E. The Employer-Computed Tip Reporting Process Certification Form, set forth in Appendix E (but only if the Employer uses an Employer-Computed Tip Reporting Process to compute and report the tips of Participating Employees as described in Section V.J of this Agreement); and

F. The GITCA Contact Listing for both the Service and the Employer, set forth in Appendix F.

III. INTENDED BENEFICIARIES

The Participating Employees of the Employer are intended beneficiaries of this Agreement.

IV. EMPLOYEE PARTICIPATION

A. For purposes of this Agreement, an "Eligible Employee" means an individual employed by the Employer who:

(1) performs a job function in an Occupational Category described in Appendix A of this Agreement; and

(2) regularly and routinely receives tips, directly or indirectly, of at least $20 per month during the course of the individual's employment.

B. A "Participating Employee" is an Eligible Employee who:

(1) filed, if required to do so by law, federal income tax returns for the three taxable years that precede the Effective Date of this Agreement or, if the employee has not yet filed, files these returns prior to signing the Model Gaming Employee Tip Reporting Agreement provided in Appendix C of this Agreement;

(2) gives to the Employer a signed Model Gaming Employee Tip Reporting Agreement;

(3) either (i) reports and continues to report tips to the Employer at or above the "tip rates" set forth in Section VIII of this Agreement, or (ii) works for an Employer that utilizes an Employer-Computed Tip Reporting Process to compute and report the tips of Participating Employees for the taxable year as described in Section V.J of this Agreement, and

(4) timely files federal income tax returns that report those tips.

C. A Participating Employee who revokes the election under the Model Gaming Employee Tip Reporting Agreement to participate in the tip reporting program under this Agreement must begin reporting tips to the Employer effective on the first day of the next payroll period, as provided by section 6053 of the Internal Revenue Code and shall be treated as a Nonparticipating Employee for the entire taxable year in which the revocation occurred. The Employee may not enter into a new Model Gaming Employee Tip Reporting Agreement with the Employer until January 1 of the following taxable year.

D. If a Participating Employee reports tips to his or her Employer in an amount below the tip rate set forth in Section VIII of this Agreement, the employee will be deemed to have revoked his or her election under the Model Gaming Employee Tip Reporting Agreement and will be treated as specified in paragraph C of this section.

E. An Eligible Employee who has filed federal income tax returns for the three taxable years that precede the Effective Date of this Agreement but has not fully paid the tax liability reported on the returns, or has additional tax liability due to, for example, a completed examination of the returns or the filing of amended returns, may participate in this program. To participate, however, the employee must contact the local office of the Service within the later of 60 days of electing to become a Participating Employee under this Agreement or 60 days of commencing employment to resolve the tax liability.

F. For purposes of this Agreement, a “Nonparticipating Employee” is any Eligible Employee who does not meet the definition of a Participating Employee.

G. An employee may report tips on the employee’s federal income tax return below the tip rates if the employee can substantiate, with adequate books and records, that the employee earned less tip income than would be reflected by applying the tip rates. As indicated in Section IV.D., this employee would be considered a Nonparticipating Employee.

V. EMPLOYER PROGRAM

A. The Employer agrees to encourage all of its Eligible Employees to become Participating Employees and to sign the Model Gaming Employee Tip Reporting Agreement, attached as Appendix C. The Employer agrees to keep these agreements for at least the period of limitation on assessment of employment tax for the years in which this Agreement is in effect and to make the agreements available to the Service upon request.

B. The Employer shall withhold and pay tax based upon tips reported, as required by law.

C. The Employer shall include all reported tips on Forms W–2.

D. The Employer acknowledges that the Service has authority, including the issuance and enforcement of summonses pursuant to sections 7602, 7604, and 7609 of the Code, to secure the information necessary for the Service to develop the tip rates of Nonparticipating Employees.

E. The Employer shall maintain the following records, to be made available to the Service upon request:

(1) Employee Records. For each Eligible Employee, the Employer will maintain a record of the employee’s name and social security number; the date on which the employee was hired by the Employer; the employee’s Occupational Category or Categories, as set forth in Appendix A; the employee’s reported tips; the employee’s shift(s) and hours; outlet(s) worked; and the employee’s wages.

(2) Gaming Establishment Records. For each instance of toke and chip-cashing, where the information is in the possession or control of the Employer, the Employer will maintain a record of the dollar amount of tokes and chips presented to the Employer for cashing by the toke committee (or other representatives of Eligible Employees), a list of the tip splits furnished to the Employer by its Eligible Employees or the toke committee (or other representatives of Eligible Employees), and other separate records of the amounts presented to the Employer for cashing by the toke committee. The Service acknowledges that the records of the toke committee reflecting the actual division of tips may not be in the Employer’s possession or control.

(3) Food and Beverage Operations Records. If the Occupational Categories set forth in Appendix A include food or beverage servers, the Employer will maintain gross receipts subject to food or beverage tipping, and aggregate receipts showing charged tips.

(4) Tip Rates Records. The Employer will maintain any other records relevant to determining tip rates, as may be required by other governmental agencies.

The Employer must retain the records listed in this section for at least 4 years after April 15 following the calendar year to which the records relate.

F. The Employer shall furnish to the Service the following documents:

(1) Annual Report. An annual report showing the following information for each Nonparticipating Employee:

a. The employee’s name and social security number;

b. Occupational Category or Categories;

c. shift(s) and hours;

d. outlet(s) worked;

e. wages and reported tips; and

f. total hours worked in each applicable Occupational Category, shift, and outlet.

Tips reported to the Employer by a Nonparticipating Employee do not need to be segregated by outlet.

The report is due on or before March 31 of the year after the calendar year, or any portion thereof, during which this Agreement was in effect.

(2) Additional Annual Report. Unless an Employer uses an Employer-Computed Tip Reporting Process (as described in Section V.J and as certified under Appendix E) to compute and report the tips of Participating Employees, the Employer must furnish an additional annual report showing for each Participating Employee the information described in paragraph F(1) of this section. The report is due on or before March 31 of the year after the calendar year, or any portion thereof, during which this Agreement was in effect.

(3) Additional Information — Food & Beverage Establishments. If the Occupational Categories listed in Appendix A include employees of large food and beverage establishments as defined in section 6053(c)(4) of the Code, the Employer shall provide annually to the Service, on or before the Form 8027 filing date, the following information:

a. the gross receipts subject to food and beverage tipping;

b. the aggregate amount of charge receipts attributable to such gross receipts;

c. the aggregate amount of charged tips shown on the charge receipts;

d. the sum of (i) the aggregate amount of tips reported by Nonparticipating Employees to the Employer and (ii) the amount the Employer is required to report under section 6051 of the Code with respect to service charges of less than 10 percent; and

e. the amount allocated to each Nonparticipating Employee under section 6053(c)(3) of the Code.

(4) Allocated Tips Reporting Requirements. The Employer shall report on Forms W–2 issued to Nonparticipating Employees tips allocated pursuant to section 6053 of the Code. The Employer is not required to report allocated tips on Forms W–2 issued to Participating Employees. In addition, the Employer is not required to complete the portion of Form 8027 related to tip allocations to Participating Employees.

(5) Time and Attendance System/Payroll Processing System Report. For each calendar year, the Employer shall provide a report generated from the Employer's time-and-attendance system or payroll processing system that evidences the tip rates utilized by the Employer in the preparation of the Forms W–2 and to implement this Agreement. The report will contain information showing the tip rates for each Occupational Category, shift, and outlet. The report will include the total number of the Employer's Eligible Employees as of December 31. The report is due on or before March 31 of the year after the calendar year, or any portion thereof, during which this Agreement was in effect.

G. If the Employer complies with the terms of this Agreement with respect to its Participating Employees, provides the information described in paragraph F(1) of this section with respect to its Nonparticipating Employees on Forms 8027 (or the equivalent information in an alternate form deemed acceptable by the Service) and Forms W–2, and provides the information specified in Paragraph F (3), the Employer shall be deemed to satisfy the requirement that the Employer prepare and file Forms 8027 with respect to all of its Employees.

H. If the Employer fails to maintain or provide any material information in the manner described in paragraphs E and F of this section, following notice and demand to the Employer for the information, the Service may employ any lawful means, including the issuance and enforcement of summonses pursuant to sections 7602, 7604, and 7609 of the Code, in order to secure that information.

I. In the event of a material breach by the Employer of its obligation to maintain or provide the information described in paragraphs E and F of this section that continues following notice and demand for the information by the Service, the restrictions in Section VII.A on methods of determination of additional liabilities under section 3121(q) of the Code shall be deemed to be waived by the Employer and shall be inapplicable for all taxable periods occurring after the date of the material breach, and the Service shall be permitted to determine employer liability by any lawful means.

J. For purposes of this Agreement, the term "Employer-Computed Tip Reporting Process" means a process established, maintained, and controlled by the Employer under which the time-and-attendance and payroll processing systems used for operation and management of the Employer's business are applied by the Employer during the term of this Agreement to compute, without intervention by the employee, the tips reportable in respect of each Participating Employee by:

(1) tracking and reporting each Participating Employee's Occupational Category or Categories, shift(s), outlet(s), and hours worked at each Occupational Category, shift, and outlet to which the Participating Employee is assigned during a particular workday;

(2) subjecting this information to review and validation by the Employer's management in the ordinary course of business operations for independent business purposes;

(3) recording and preserving this information as part of the Employer's time-and-attendance or payroll processing systems or in other applicable and available business records of the Employer;

(4) applying the tip rates applicable under this Agreement to the Participating Employee's work assignments by multiplying the tip rates by the total hours worked by the Participating Employee at each Occupational Category, shift, and outlet worked during the particular workday or payroll cycle (or in the case of amounts described in Section V.E(2), determining reportable tips utilizing the list of tip splits as determined by the toke committee (or other representatives of Eligible Employees as provided in Section V.E(2) of this Agreement);

(5) treating the tip amounts computed under paragraph (4) as tips reported to the Employer by the Participating Employee and withholding and paying applicable taxes on the computed tips; and

(6) reporting the tips as determined by the Employer to the Participating Employee and the Service on Form W–2 for the taxable year.

K. The Employer's process shall qualify as an Employer-Computed Tip Reporting Process under this Agreement upon the certification of the Employer, with the concurrence of the Service (which shall not be unreasonably withheld), that the process satisfies the requirements of paragraph J of this section. Qualification may be subsequently reviewed by the Service in conjunction with the renewal of this Agreement. Nothing in this section limits the Service's ability to perform a Compliance Review at any time of any underlying data per Section XIII.

VI. TIP EXAMINATIONS OF EMPLOYEES

A. Except as provided in paragraph B. of this section, the Service will not examine a Participating Employee's tip income for any taxable year that ends after the Effective Date of this Agreement to which this Agreement applies, provided that each of the following conditions is met:

(1) The employee is a Participating Employee for the entire taxable year (or such portion thereof during which the employee earns tip income). In the case of a new employee, he or she must become a Participating Employee within 60 days after commencement of employment with the Employer as an Eligible Employee.

(2) The Participating Employee:

a. reports the tips earned during the taxable year to the Employer at or above the tip rates set forth in Section VIII of this Agreement, or

b. works for an Employer that utilizes an Employer-Computed Tip Reporting Process to compute and report the tips of Participating Employees on Forms W–2; and

c. timely files a federal income tax return for the taxable year that reports tips and wages reported on Form W–2.

B. If an employee becomes a Participating Employee more than 60 days after becoming employed as an Eligible Employee, the Service may examine the Participating Employee's tip income received before the employee becomes a Participating Employee, except for the period the employee was a Participating Employee of the Employer or of another Employer under a tip compliance agreement (GITCA, TRDA, TRAC, or similar agreement) during any taxable year. Once the employee becomes a Participating Employee, the Service will not examine the employee's tip income received during the period the employee remains a Participating Employee.

C. The Service will not examine tip income of a Participating Employee for any taxable year that ends on or before the Effective Date of this Agreement, provided that during that prior period the employee was:

(1) a Participating Employee, as defined in Section IV, of the Employer under a predecessor agreement between the Employer and the Service and satisfied the terms and conditions of that agreement in that prior taxable year;

(2) a Participating Employee, as defined in Section IV, of another employer who had a Gaming Industry Tip Compliance Agreement (or other tip compliance agreement, such as a Tip Rate Determination Agreement) with the Service and satisfied the terms and conditions of that agreement in that prior taxable year; or

(3) an employee of (i) an employer that did not have a Gaming Industry Tip Compliance Agreement (or predecessor agreement) with the Service or (ii) the Employer had a Gaming Industry Tip Compliance Agreement (or predecessor agreement), but the employee was not an Eligible Employee within the meaning of that agreement, and the employee filed, if required to do so by law, federal income tax returns for the three taxable years that preceded the year of the Effective Date of this Agreement.

D. In the case of Participating Employees of an Employer that does not have a certified Employer-Computed Tip Reporting Process, if the Service believes on the basis of information provided by the Employer pursuant to Section V.F(2) that the Participating Employee did not report tips on his or her federal income tax return as required by Section VIII of this Agreement, the Service shall confirm with the Employer the accuracy of the Participating Employee data received from the Employer prior to making any determination that tips have not been reported at or above the applicable rates.

E. A Nonparticipating Employee is subject to the full range of compliance and enforcement procedures of the Service, at any time, including during the term of this Agreement. (The treatment of the Employer in the case of Nonparticipating Employees is set forth in Section VII.A(2)).

F. At the Service's discretion, the Service may continue any ongoing examination of any employees of the Employer begun by the Service before the Effective Date of this Agreement.

VII. TIP EXAMINATIONS OF EMPLOYER

A. With respect to any taxable year during which this Agreement is in effect:

(1) the Service may not assert liability against the Employer pursuant to section 3121(q) of the Code with respect to the tip income of Participating Employees (except in the limited case provided in subparagraph (2)(ii) immediately below).

(2) the Service may assert liability against the Employer pursuant to section 3121(q) of the Code based on (i) tips received by a Nonparticipating Employee if the asserted liability is based upon the final results of an audit or agreement of the Nonparticipating Employee or (ii) the reporting of additional tip income by an employee.

B. At the Service's discretion, the Service may continue any ongoing examination of the Employer begun by the Service before the Effective Date of this Agreement.

VIII. TIP RATES

A. This section sets forth the applicable tip rates under this Agreement. The Parties established the applicable tip rates as follows:

(1) Employees Who Pool Tips. In satisfaction of their tip reporting obligations under section 6053(a) of the Code with respect to employees who pool tips, these employees or their employee group representatives (*e.g.*, the toke committee) shall present to the Employer a listing of the actual share of pooled tips received by or given to each employee. This listing must reconcile to the tips presented to the Employer's cage for cashing. The tip rate in the case of these employees is the amount of tips so reported to the Employer with respect to each employee.

(2) Other Tipped Employees — Specified Occupational Categories. Based on information available from the Employer, historical information available to the Service, and generally accepted accounting principles, the Employer and the Service have agreed to separate tip rates for the occupational categories or subcategories of Eligible Employees ("Occupational Category"), shifts, and outlets listed on Appendix A for each of the years during which this Agreement is in effect. These rates specify tips received, by hour, by shift, by drink, by percentage of sales, or other mutually agreed and verifiable bases of measurement depending on the nature of the work performed.

B. Tip Rates and Occupational Categories.

(1) In General. The applicable Tip Rates and Occupational Categories established by this Agreement shall remain in effect for the term of this Agreement, unless modified pursuant to paragraph B(2) or (3) of this section.

(2) Mutual Agreement Process. The Service or the Employer may propose revisions to tip rates or Occupational Categories during the term of the Agreement. The non-proposing party will notify the proposing party in writing of approval or disapproval within 60 calendar days of receipt of the proposed revision. The non-proposing party will not unreasonably withhold approval. If accepted, the revisions will become effective upon the date agreed to by the Parties.

(3) Request for Tip Rate Modification. Upon the occurrence of one of the following specific events:

a. a significant change in the nature of the business (or segment thereof) in which the Participating Employee earns tips (*e.g.*, an Employer converts an upscale restaurant into a coffee shop),

b. a decrease of 20 percent or more in the Employer's gross monthly revenue as compared to the same month of the previous year, or

c. a drop below 50 percent in the participation rate of any Occupational Category as of the participation measurement date,

the Employer may request that the Service agree to a modification in the relevant tip rate of an affected Participating Employee within an Occupational Category (*e.g.*, an outlet or shift) that is appropriate in amount and duration, consent to which shall not be unreasonably withheld.

The process established in paragraph B(3) of this section for the revision of a tip rate upon the occurrence of specific events in no way limits the circumstances that may give rise to a request for revision of a tip rate under the mutual agreement process described in paragraph B(2) of this section.

IX. TERM OF AGREEMENT

A. This Agreement shall commence on the Effective Date and shall terminate on ________________. The “Effective Date” of this Agreement shall be ________________.

B. The Service and the Employer agree that, beginning not later than six months prior to the termination date described in paragraph A., they shall commence discussions as to any appropriate revisions to this Agreement, including any appropriate revisions to the tip rates described in Section VIII. In the event that the Service and the Employer have not reached final agreement on the terms and conditions of a renewal Agreement to become effective beginning on ____________, the Parties may, by mutual agreement, extend this agreement for an appropriate time to finalize and execute a renewal Agreement.

C. Neither the Employer’s nor the Service’s decisions regarding renewal of agreements are subject to review.

X. TERMINATION OF AGREEMENT; SURVIVAL OF TERMS

A. If employee participation is below 75 percent of the Eligible Employees, the Service and the Employer shall meet to discuss the cause of the decline in the participation rate and appropriate measures to increase the participation rate. At the meetings, the Employer shall provide information with respect to the records necessary for assessing the tip rate and for assessing the procedures used to encourage all of the Employer’s Eligible Employees to be Participating Employees.

(1) If the Employer undertakes good faith discussions with the Service on these matters and the Employer is not in breach of its obligations under Section V.A, the Service may not terminate the Agreement.

(2) If the Employer fails to undertake good faith discussions with the Service on these matters or the Employer is in breach of its obligations under Section V.A, the Service may terminate the Agreement.

B. The Service may terminate this Agreement by written notice if participation falls below 50 percent of the Eligible Employees. Termination by the Service shall become effective on the first day of the first payroll period after the 60^{th} day after the date of the written notice.

C. This Agreement may be terminated upon the joint agreement of the Employer and the Service, without the consent of any Participating Employee. The effective date of termination shall be as agreed to by the Employer and the Service.

D. If either party fails to comply with any material provision of this Agreement, the non-defaulting party, at its option, may terminate this Agreement by giving written notice of termination to the other party. Termination of the Agreement shall be effective upon receipt of the notice by the other party.

E. If this Agreement is terminated pursuant to the terms of this agreement, the mutual obligations of the Parties shall remain in effect through the effective date of termination. The agreements set forth in Sections VI and VII shall survive termination with respect to taxable periods (or portion thereof) that occur prior to the effective date of termination.

XI. PRECEDENTIAL VALUE

The contents of this agreement may not be used or cited as precedent by any other Employer or other taxpayer and will not bind, or otherwise control, the Parties for taxable years or issues not covered by this Agreement.

XII. FAILURE TO COMPLY

If the Employer fails or refuses to provide any of the information required by this Agreement, the Service may employ any lawful means, including the issuance and enforcement of summonses pursuant to sections 7602, 7604, and 7609 of the Code, in order to secure the information.

XIII. COMPLIANCE REVIEW

The Employer agrees that a compliance review or other inspection of books and records, as required for compliance with the terms of this Agreement, will not be considered an examination or inspection of books of account for purposes of section 7605(b) of the Code or the Service’s policy and procedures for reopening cases closed after examination, or an audit for purposes of section 530 of the Revenue Act of 1978.

XIV. EXCLUSION OF CERTAIN EMPLOYEES

This Agreement does not cover employees of the Employer working in housekeeping and those employees shall not be considered Eligible Employees for purposes of this Agreement.

XV. OTHER AGREEMENTS SUPERSEDED

This Agreement shall supersede all existing tip compliance agreements between the Employer and the Service.

XVI. ENTIRE AGREEMENT

This Agreement contains the final and entire agreement between the Employer and the Service.

By signing this Gaming Industry Tip Compliance Agreement, the Parties certify that they have read and agreed to the terms of this document, including all Appendices.

EMPLOYER:	**INTERNAL REVENUE SERVICE:**
By ______________	By ______________
TITLE ______________	TITLE ______________
EIN# ______________	
Address ______________	Address ______________
______________	______________
______________	______________
______________	______________
Date ______________	Date ______________

APPENDIX A

Occupational Categories, Outlets, Shifts and Tip Rates

Occupational Category	Outlet	Shift	Tip Rate Yr. 1	Tip Rate Yr. 2	Tip Rate Yr. 3

APPENDIX B

Narrative Summary of Tip Rate Calculation Methodology

APPENDIX C

Model Gaming Employee Tip Reporting Agreement

I am an employee of ________________, and by signing this agreement I am choosing to participate in the tip reporting program administered by my employer under the Gaming Industry Tip Compliance Agreement between my employer and the Internal Revenue Service (Service).

I understand that I have responsibilities under this agreement and agree to the following terms and conditions.

A. General Responsibilities.

(1) I will report tips to my employer at or above the tip rate that has been established pursuant to the Gaming Industry Tip Compliance Agreement for my job or have my employer compute my reportable tips for me using the tip rate. [I understand that I may revoke this agreement and report (either to my employer or to the Service) tips below the tip rate if I can substantiate, to the satisfaction of the Service and subject to a possible review by the Service, that I earned less tip income than would be reflected by applying the tip rate].

(2) I will file my Federal income tax returns on a timely basis and report those tips and the rest of my earnings from my job as shown on the Form W–2 that my employer gives me, as well as any other income.

(3) For each of the three years prior to the date of this agreement, if required to do so, I have filed a Federal income tax return on a timely basis. If I have filed all of these tax returns but have not fully paid the tax I owe, I must contact the local office of the Service within 60 days from now to resolve my account.

If I fulfill my responsibilities and continue to participate under this tip reporting program, I will receive important benefits under this agreement.

B. Benefits Under Agreement.

(1) If I report to my employer tips at or above the tip rate that has been established for my job or if my employer computes my reportable tips for me using the tip rate and reports them to me and to the Service on Form W–2, the Service will not audit my tip income received after the date of this agreement during which the Gaming Industry Tip Compliance Agreement between my employer and the Service is in effect.

(2) The Service also will not audit my tip income for any prior tax year during which (i) I was a participant in a prior tip compliance agreement while working for my current employer or a former employer, or (ii) I had no opportunity to participate in a prior tip compliance agreement because I worked in a job that was not covered by a tip compliance agreement or because my employer did not have a tip compliance agreement with the Service.

(3) If I was eligible to participate in an employer's tip compliance agreement in prior tax years but did not do so, I will not be protected from an audit of my tip income for those prior years, but I will receive protection from audit of my tip income received after the date of this agreement during which the Gaming Industry Tip Compliance Agreement between my employer and the Service is in effect.

(4) If I sign this agreement within 60 days after I first became employed with my current employer, I will be protected from an audit of my tip income received after the beginning date of employment during which the Gaming Industry Tip Compliance Agreement between my employer and the Service is in effect. If I sign this agreement more than 60 days after I first became employed with my current employer, I will be protected from an audit of my tip income received after the date of this agreement during which the Gaming Industry Tip Compliance Agreement between my employer and the Service is in effect.

C. Revocation of Agreement. I understand that the following additional terms and conditions apply to this agreement.

(1) I may revoke this agreement in writing to my employer at any time.

(2) If I report tips to my employer or the service below the established tip rate, this agreement will be automatically revoked.

(3) If this agreement is revoked, I must begin reporting my tips to my employer, beginning with the tips I receive on the first day of the next payroll period.

(4) Upon revocation of this agreement, I will no longer be protected from an audit of my tip income for the tax year in which I revoke the agreement.

(5) After revocation of this agreement, I will not be able to sign up again for my employer's tip reporting program until January 1 of the year after I revoke this agreement.

D. Term of Agreement. This agreement shall remain in effect as long as there is a Gaming Industry Tip Compliance Agreement between my employer and the service, and I have not taken any actions to terminate this agreement either by notifying my employer in writing or by reporting tips to my employer or the Service in an amount less than the agreed upon rates.

By signing below, I agree to fulfill my responsibilities under this agreement and to participate in the tip reporting program pursuant to the Gaming Industry Tip Compliance Agreement between my employer and the Service.

______________________	______________________
Signature	Social Security Number
______________________	______________________
Printed Name of Employee	______________________
	______________________
	Address

APPENDIX D

Model Extension Agreement

The Gaming Industry Tip Compliance Agreement (Agreement) signed by the Employer, ____________________ and the Internal Revenue Service (the Parties), effective on ___________, shall expire on, ___________.

The Parties wish to renew the Agreement, but have not reached final agreement on the terms and conditions of the renewal. In order to allow more time to finalize and execute a renewal, the Parties agree to extend the original Agreement until ___________.

EMPLOYER:	**INTERNAL REVENUE SERVICE:**
By ______________________	By ______________________
TITLE ___________________	TITLE ___________________
EIN# ____________________	
Date ____________________	Date ____________________

APPENDIX E

Employer-Computed Tip Reporting Process Certification

____

(name of Employer)

certifies that it utilizes an Employer-Computed Tip Reporting Process within the meaning of Section V.J of the Gaming Industry Tip Compliance Agreement to compute and report tips of Participating Employees on Forms W–2.

____

Employer Representative & Date

****

A representative of the Internal Revenue Service has reviewed the Employer's Certification and

____

(Concurs/Does Not Concur)

If the representative of the IRS does not concur with the Employer's Certification, the representative will provide the Employer with the actions necessary to attain certification.

____

IRS Representative & Date

APPENDIX F

GITCA Contact Listing

IRS Contacts:

IRS Program Manager

Name

____

Address

____

____

____

Telephone

____

E-Mail _____________________

IRS Tax Manager (Local Office)

Name

____

Address

____

____

____

Telephone

____

E-Mail _____________________

IRS Examiner

Name ______________________

Address ______________________

____

____

Telephone ______________________

E-Mail ______________________

Taxpayer Advocate (Local Office)

Name ______________________

Address ______________________

____

____

Telephone ______________________

E-Mail ______________________

Employer Contacts:

Name ______________________

Address ______________________

____

____

Telephone ______________________

E-Mail ______________________

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26 CFR 601.602: Tax forms and instructions.
(Also: Part 1, §§ 1, 223.)

Rev. Proc. 2007–36

SECTION 1. PURPOSE

This revenue procedure modifies and supersedes section 3.24(1) of Rev. Proc. 2006–53, 2006–48 I.R.B. 996, which provides inflation adjusted items for 2007 for Health Savings Accounts (HSAs) under § 223 of the Internal Revenue Code. This revenue procedure also provides inflation adjusted items for HSAs for 2008.

SECTION 2. BACKGROUND

Section 303 of the Health Opportunity Patient Empowerment Act of 2006, Title III of the Tax Relief and Health Care Act of 2006, Pub. L. No. 109–432, 120 Stat. 2922 (2006) (the Act), changes the maximum annual contribution for HSAs. Under prior law, the maximum annual HSA contribution was the lesser of the deductible of the high deductible health plan or the indexed statutory amount. For taxable years beginning after December 31, 2006, § 303 of the Act amends § 223(b) to provide that the maximum annual HSA contribution is the indexed statutory amount, without reference to the deductible of the high deductible health plan.

Section 304 of the Act amends the rules for calculating cost-of-living adjustments for HSA amounts in § 223. Section 304 of the Act amends § 223(g) to provide that, for cost-of-living adjustments made for taxable years beginning after 2007, § 1(f)(4) is applied using March 31 instead of August 31 as the close of the 12-month period described in § 1(f)(4). Section 223(g) also provides that the adjusted amounts under § 223 will be published no later than June 1 of the preceding calendar year.

SECTION 3. MODIFICATION OF SECTION 3.24(1) OF REV. PROC. 2006–53

Section 3.24(1) of Rev. Proc. 2006–53 is modified to read as follows:

(1) *Annual contribution limitation*. For calendar year 2007, the limitation on deductions under § 223(b)(2)(A) for an individual with self-only coverage under a high deductible health plan is $2,850. For calendar year 2007, the limitation on deductions under § 223(b)(2)(B) for an individual with family coverage under a high deductible health plan is $5,650.

SECTION 4. INFLATION ADJUSTED ITEMS FOR HSAs FOR 2008

Annual contribution limitation. For calendar year 2008, the limitation on deductions under § 223(b)(2)(A) for an individual with self-only coverage under a high deductible health plan is $2,900. For calendar year 2008, the limitation on deductions under § 223(b)(2)(B) for an individual with family coverage under a high deductible health plan is $5,800.

High deductible health plan. For calendar year 2008, a "high deductible health plan" is defined under § 223(c)(2)(A) as a health plan with an annual deductible that is not less than $1,100 for self-only coverage or $2,200 for family coverage, and the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed $5,600 for self-only coverage or $11,200 for family coverage.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Section 3.24(1) of Rev. Proc. 2006–53 is modified and superseded.

SECTION 6. EFFECTIVE DATES

Section 3 of this revenue procedure is effective for calendar year 2007. Section 4 of this revenue procedure is effective for calendar year 2008.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Marnette M. Myers of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Marnette M. Myers at (202) 622–4920 (not a toll-free call).

Part IV. Items of General Interest

Anti-Avoidance and Anti-Loss Reimportation Rules Applicable Following a Loss on Disposition of Stock of Consolidated Subsidiaries; Correction

Announcement 2007–50

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations (T.D. 9322, 2007–18 I.R.B. 1100) that were published in the Federal Register on Tuesday, April 10, 2007 (71 FR 17804) providing guidance to corporations filing consolidated returns and apply an anti-avoidance rule and revising an anti-loss reimportation rule that applies following a disposition of stock of a subsidiary at a loss.

FOR FURTHER INFORMATION CONTACT: Theresa Abell, (202) 622–7700 or Phoebe Bennett, (202) 622–7770 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (T.D. 9322) that is the subject of these corrections are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, these final and temporary regulations (T.D. 9322) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, these final and temporary regulations (T.D. 9322) that were the subject of FR Doc. E7–6541, are corrected as follows:

1. On page 17805, column 1, in the preamble, under the paragraph heading "*Background and Explanation of Provisions*" paragraph 2, line 6 from the bottom of the column, the language "the loss reimportation rule is also" is corrected to read "the anti-loss reimportation rule is also".

2. On page 17805, column 2, in the preamble, under the paragraph heading "*Special Analyses*", line 5 from the top of the column, the language "U.S.C. 553(b)(B) that prior notice and" is corrected to read "U.S.C. 553(b)(3)(B) that prior notice and".

3. On page 17805, column 2, in the preamble, under the paragraph heading "*Special Analyses*", line 16 from the top of the column, the language "reference notice of the proposed" is corrected to read "reference notice of proposed".

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

(Filed by the Office of the Federal Register on April 30, 2007, 8:45 a.m., and published in the issue of the Federal Register for May 1, 2007, 72 F.R. 23771)

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

Announcement 2007–51

The names of organizations that no longer qualify as organizations described in section 170(c)(2) of the Internal Revenue Code of 1986 are listed below.

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on May 29, 2007, 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.

Security Warranty, Inc.
San Antonio, TX
Franklin Foundation, Inc.
Gaithersburg, MD
Howard Family Foundation
Chicago, IL
Center for Electronic Art
Woodacre, CA
Richard & Jane Pater
Charitable Foundation
Salt Lake City, UT

Foundations Status of Certain Organizations

Announcement 2007–52

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Adoptions Abroad, Houston, TX
American Council for Adjunct Faculty, Inc., Columbia, MD
And Bibles for All, Salem, OR
Ark Adventures, Inc., Weatherford, TX
Batavia Youth Football, Inc., Cincinnati, OH
Bonim Lamokom, Inc., Brooklyn, NY
Butlee's Handicap Outdoor Adventures Corporation, Brockton, MA
Childrens Global Relief Project, Inc., Elmont, NY
Citizens Advisory Panel, Inc., Bridgehampton, NY
Clemente Garcia Jr. Community Learning Center, Corpus Christi, TX
Community Home Services, Inc., Georgetown, TX
Community Vision, Carlsbad, NM
Cornerstone Art Group, Sherman Oaks, CA
Cuerda Floja Arts Troupe, Oak Park, IL
E J Ralph Foundation, Inc., Riverdale, NY
Federal Hill Foundation, Incorporated, Arlington, VA
Friends of Summit Children's Residence Center, Inc., Upper Nyack, NY
Gaelic Language Foundation, New York, NY
Gina Eisenman Foundation, Inc., San Diego, CA
Gods Will for Africa, Columbia, SC
Grassroots Foundation, Inc., Oak Park, IL
Greater Weatherly Ambulance Association, Inc., Weatherly, PA
Hebron House, Inc., North Brunswick, NJ
Hogar Divino Jesus, Inc., Toa Baja, PR
Institut De La Maison De Bourbon, Thomasville, GA
Jesus Cares Ministry, Inc., Irvington, NJ
Kamp Kiwanis Childrens Foundation, Inc., Lexington, NC
Kansas City 4wd Association, Inc., Olathe, KS
Kentucky Blasting Conference, Keene, KY
Kiwanis Club of Flamingo-Hialeah Foundation, Inc., Hialeah, FL
Milwaukee Marauders, Inc., Grafton, WI
Miracle League of Maryland, Baltimore, MD
Musicians Uplifting Services in the Community, Jackson, MI
National Football League Players Association — Tampa Bay Chapter, Tampa, FL
Nepali Tibetan Education Center, South Pasadena, CA
Nevada Medical and Aesthetic Nonprofit Organization, Sacramento, CA
Old West Enrichment Center, Inc., Tallahassee, FL
Possibility Ranch, Lake Arrowhead, CA
Redemption Home of Love, McKinney, TX
Resurrection Group, Ltd., New York, NY
Riley Arts Foundation, Pasadena, CA
Rochester Rowing Club of Minnesota, Rochester, MN
Rock Solid Foundations, Inc., Norcross, GA
Sail Musical on Tour Corp, Readington, NJ
SATEC, Nine Mile Falls, WA
Shoppers Charitable Foundation, Inc., Lanham, MD
Simi Valley Future Stars, Inc., Simi Valley, CA
Skate Park Association International, Inc., Los Angeles, CA
Soma (Strategies for the Organic Management of Agriculture), Inc., New York, NY
Starving Pets & Animals Rescue Effort, Stanwood, WA
Tawana Williams Outreach, Inc., Wilson, NC
Treasured Hearts Ministry, Somerset, MA
United Hispanics Union All, All, Against The Lead, Miami, FL
Vietnamese Physician Foundation of Northern California, San Jose, CA
Watertown Firestation No 2 Foundation, Inc., Watertown, WI
Whoa-Womens Hockey Organization of Arizona, Chandler, AZ
Wilson Midget Football Association, Easton, PA
Womens Eleemosynary Foundation aka District 1 PWA Charitable Education Foundation, Chicago, IL
Worthy Center, Bakersfield, CA

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

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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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
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