Commentators have suggested that, in these situations, it may be appropriate to permit or require the distributee partner to recognize capital gain to the extent the adjusted basis of the distributed hot assets exceeds that partner's basis in the partnership interest. In Example 3, *A* could elect, or be required, to recognize capital gain equal to the amount by which the adjusted basis of the distributed hot assets exceeds that partner's basis in the partnership interest ($50), thereby increasing *A*'s basis to $50. The distributed hot asset would take a $50 basis in *A*'s hands under § 732(b), and no § 734(b) adjustment would be made to the retained hot asset. If *A* recognizes capital gain on the distribution, future regulations could permit an equivalent increase to the basis of the partnership's retained cold assets.

Section 4. REQUEST FOR COMMENTS

The Treasury Department and the Service are conducting a study of the current § 751(b) regulations and are considering alternative approaches to achieving the purpose of the statute that would provide greater simplicity. For example, it may be possible to provide safe harbor methods for calculating the share of ordinary income or capital gain that should be recognized as a result of a disproportionate distribution that may reduce some administrative burden but still serve the purpose of the statute. In this regard, the Treasury Department and the Service request comments on the approaches discussed in this notice (as well as other possible approaches) to determining a partner's share of hot assets and to prescribing the tax consequences of a disproportionate distribution. Comments are requested concerning the following issues:

A. For purposes of determining each partner's share of partnership assets before and after a distribution that may be subject to § 751(b),

1. Whether the hypothetical sale approach (combined with the application of § 704(c) principles) for determining each partner's share of partnership assets provides an accurate and appropriate measure for purposes of § 751(b). In particular,
   a. Whether special rules would be necessary to address situations in which the distributee partner's interest in unrealized appreciation in hot assets prior to the distribution exceeds the partner's interest in partnership capital after the distribution;
   b. Whether the hypothetical sale approach should be modified to take into account changes in allocations that are planned or may occur in the future or changes in the partner's interest in anticipated future appreciation and depreciation in partnership assets;
   c. The extent to which regulations adopting the hypothetical sale approach should take into account the distributee partner's basis in the partnership interest and basis adjustments under §§ 734(b) and 743(b), including basis adjustments resulting from the distribution;
   d. Whether the partners' shares of partnership liabilities should be considered in determining the partners' shares of partnership assets, and how the rules of § 752 should be coordinated with those of § 751(b).
2. Whether § 751(b) should be limited to transactions that change the partners' shares of unrealized appreciation in hot assets or should also apply to transactions that change the partners' shares of unrealized depreciation in hot assets.
3. Whether other approaches to determining a partner's share of partnership hot and cold assets should be considered.

B. For purposes of simplifying the tax consequences of a distribution that is subject to § 751(b), whether the hot asset sale approach is an appropriate method of applying § 751(b) or whether other approaches should be considered. Comments are specifically requested on the following:

1. Whether the regulations should provide a simple safe harbor that approximates the appropriate taxation of a disproportionate distribution and, if so, the appropriate parameters and availability of such a safe harbor.
2. Whether the current § 751(b) regulations should be generally retained or retained in combination with a safe harbor, or whether the current § 751(b) regulations should be completely revised to adopt a new paradigm such as the hot asset sale approach.
3. Whether mandatory or elective capital gain recognition should be included in the hot asset sale approach.

Comments should be submitted in writing on or before August 2, 2006, and should include a reference to Notice 2006–14. In addition to the topics on which comments are specifically requested above, comments are requested on any other matters that should be addressed in future guidance under § 751(b). Comments may be submitted to CC:PA:LPD:PR (Notice 2006–14), Room 5226, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, comments may be submitted electronically via the following e-mail address: *Notice.Comments@irscounsel.treas.gov*. Please include "Notice 2006–14" in the subject line of any electronic communications. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:PA:LPD:PR (Notice 2006–14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

DRAFTING INFORMATION

The principal author of this notice is Charlotte Chyr of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Charlotte Chyr at (202) 622–3070 (not a toll-free call).

Extension of June 28, 2005, Safe Harbor Date

Notice 2006–15

The purpose of this notice is to extend the June 28, 2005, grandfather date in Rev. Proc. 2005–24, 2005–16, I.R.B. 909, until further guidance is issued by the Internal Revenue Service.

Rev. Proc. 2005–24 applies to any charitable remainder annuity trust (CRAT) or charitable remainder unitrust (CRUT) that is created by the grantor, *G*, if, under applicable state law, *G*'s surviving spouse, *S*, has a right of election exercisable on *G*'s death to receive an elective, statutory share of *G*'s estate, and such share could be satisfied in whole or in part from the assets of the CRAT or CRUT in violation of § 664(d)(1)(B) or (d)(2)(B) of the Internal Revenue Code. Rev. Proc. 2005–24 provides a safe harbor procedure under which the Service will disregard the right of election for purposes of determining whether the CRAT or CRUT meets the requirements of § 664(d)(1)(B) or (d)(2)(B) continuously since its creation, if *S* irrevocably waives the right of election in the manner prescribed in the revenue procedure. For trusts created before June 28, 2005, the Service will disregard the right of election, even without a waiver, but only if *S* does not exercise the right of election.

Commentators have asserted that Rev. Proc. 2005–24 places an undue burden on taxpayers and trustees seeking to comply with the safe harbor rule. Some commentators have recommended that the Service withdraw the revenue procedure. Other commentators have suggested alternative safe harbor rules. The Service and Treasury are reconsidering the approach of Rev. Proc. 2005–24, including the safe harbor rule. The Service and Treasury are also considering alternative safe harbor rules. Consequently, the Service is extending the June 28, 2005, grandfather date. Until further guidance is published regarding the effect of a spousal right of election on a trust's qualification as a CRAT or CRUT, the Service will disregard the existence of such a right of election, even without a waiver as described in Rev. Proc. 2005–24, but only if the surviving spouse does not exercise the right of election.

The principal author of this notice is Susan H. Levy of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Susan H. Levy at (202) 622–3090 (not a toll-free call).

Recomputed Differential Earnings Rate for Mutual Life Insurance Companies

Notice 2006–18

This notice publishes a tentative determination under § 809 of the Internal Revenue Code of the "recomputed differential earnings rate" for 2004. This rate is used by mutual life insurance companies to calculate their federal income tax liability for taxable years beginning in 2005.

The Job Creation and Worker Assistance Act of 2002, Pub. L. 107–147, § 611, amended § 809 by adding new paragraph (j). Section 809(j) provides that the differential earnings rate shall be treated as zero for purposes of computing both the differential earnings amount and the recomputed differential earnings amount for a mutual life insurance company's taxable years beginning in 2001, 2002, or 2003. *See* Notice 2002–33, 2002–1 C.B. 989. Subsequently, the Pension Funding Equity Act of 2004, Pub. L. 108–218, § 205, repealed § 809 of the Code for taxable years beginning after December 31, 2004. Therefore, the Internal Revenue Service is required to determine a differential earnings rate for 2004 and a recomputed differential earnings rate for 2004. The differential earnings rate for 2004 was zero. *See* Rev. Rul. 2005–58, 2005–36 I.R.B. 465.

The tentative determination of the rates is set forth in Table 1.

Notice 2006–18 Table 1

Tentative Determination of Rates To Be Used For Taxable Years Beginning in 2005

Rate	Value
Recomputed differential earnings rate for 2004	0
Imputed earnings rate for 2004	4.449
Base period stock earnings rate	18.221
Current stock earnings rate for 2004	4.913
Stock earnings rate for 2001	2.354
Stock earnings rate for 2002	-1.876
Stock earnings rate for 2003	14.261
Average mutual earnings rate for 2004	10.450

For additional background concerning the tentative recomputed differential earnings rate, see Notice 2002–19, 2002–1 C.B. 619.

DRAFTING INFORMATION

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