support of C's tax preparation business, C makes a grant request to a charitable foundation to fund C's operations providing free tax preparation services to low- and moderate-income families. In support of C's request, C includes anonymous statistical data showing that, in 2008, C provided services to 500 taxpayers, that 95% of the taxpayer population served by C received the Earned Income Tax Credit (EITC), and that the average amount of the EITC received was $3,300. C may disclose this information because it contains an anonymous statistical compilation, is in direct support of their tax return preparation services, and is consistent with this interim guidance.

Example 4. Preparer D is a tax return preparer as defined by § 301.7216–1(b)(2)(i)(A). In December 2007, D produced an anonymous statistical compilation of tax return information obtained during the 2007 filing season. In 2009, D discloses portions of the anonymous statistical compilation in connection with the marketing of its financial advisory and asset planning services. D is required to receive taxpayer consent under § 301.7216–3 before disclosing the tax return information contained in the anonymous statistical compilation because the disclosure is not being made in support of the tax return preparation business.

EFFECTIVE DATE

This interim guidance applies to disclosures of anonymous statistical compilations of tax return information occurring on or after February 9, 2009. This interim guidance expires on the earlier of the date that it is superseded or December 31, 2009.

REQUESTS FOR COMMENTS

Interested parties are invited to submit comments on this notice and modifications to § 301.7216–2(o) by May 10, 2009. Comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2009–13), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20224. Alternatively, comments may be hand-delivered Monday through Friday between the hours of 8:00 a.m. to 4:00 p.m. to: CC:PA:LPD:PR (Notice 2009–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Comments may also be submitted electronically via the following e-mail address: *Notice.Comments@irscounsel.treas.gov*. Please include Notice 2009–13 in the subject line of any electronic submission.

DRAFTING INFORMATION

The principal author of this notice is Molly K. Donnelly, Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Molly K. Donnelly at (202) 622–4940 (not a toll-free call).

Credit Rates on Tax Credit Bonds

Notice 2009–15

SECTION 1. Purpose

This notice provides guidance regarding how the Treasury Department and the Internal Revenue Service (IRS) will determine and announce credit rates on certain tax credit bonds described in this notice.

SECTION 2. Background

Section 54A provides for the issuance of certain qualified tax credit bonds in which investors are eligible to receive Federal tax credits in lieu of the payment of all or a portion of the interest on the tax credit bonds. Qualified tax credit bonds under § 54A include qualified forestry conservation bonds, new clean renewable energy bonds, qualified energy conservation bonds, and qualified zone academy bonds. Section 54A(b)(3) provides that the applicable credit rate for a qualified tax credit bond is the rate which the Secretary of the Treasury estimates will permit the issuance of the qualified tax credit bond with a specified maturity or redemption date without discount and without interest cost to the qualified issuer. Section 54A(b)(3) further provides that the applicable credit rate with respect to any qualified tax credit bond shall be determined as of the first day on which there is a binding written contract for the sale or exchange of the bond. In addition, §§ 54 and 1400N(l) provide for the issuance of certain tax credit bonds known as clean renewable energy bonds and Midwestern tax credit bonds, respectively, which have similar credit rate-setting procedures. Unless otherwise provided, references in this notice to tax credit bonds include qualified tax credit bonds under § 54A, clean renewable energy bonds under § 54, and Midwestern tax credit bonds under § 1400N(l).

SECTION 3. Credit Rates

Pending further notice in a manner described in this notice, the Treasury Department will determine and announce credit rates for tax credit bonds daily for purposes of §§ 54, 54A, 1400N(l), and other similar provisions, based on its estimate of the yields on outstanding bonds from market sectors selected by the Treasury Department in its discretion that have an investment grade rating of between A and BBB for bonds of a similar maturity for the business day immediately preceding the sale date of the tax credit bonds. The applicable credit rate for a tax credit bond on its sale date is the credit rate published for that date by the Bureau of Public Debt on its Internet site for State and Local Government Series securities at: *https://www.treasurydirect.gov*. The Treasury Department and the IRS will set forth future refinements in the manner for determining credit rates on tax credit bonds in regulations, public notices, forms, instructions, or public notice directly on the above-referenced Internet site on which credit rates on tax credit bonds presently are published.

SECTION 4. Effect on Other Documents

Notice 99–35, 1999–2 C.B. 26 (July 12, 1999) is obsoleted. Notice 2007–26, 2007–14 C.B. 870 (April 2, 2007) is modified.

SECTION 5. Effective Date.

This notice is effective as of January 22, 2009.

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26 CFR 1.168(k)–1: Additional first year depreciation deduction.
(Also: §§ 38, 41, 52, 53, 168, 383, 702, 1374,1502, 6031, 6401.)

Rev. Proc. 2009–16

SECTION 1. PURPOSE

This revenue procedure supplements Rev. Proc. 2008–65, 2008–44 I.R.B. 1082, to provide additional guidance under § 3081 of the Housing and Economic Recovery Act of 2008, Pub. L. No. 110–289,

122 Stat. 2654 (July 30, 2008) (Housing Act). Section 3081(a) of the Housing Act amends § 168(k) of the Internal Revenue Code by adding § 168(k)(4), allowing corporations to elect not to claim the 50-percent additional first year depreciation for certain new property acquired after March 31, 2008, and placed in service generally before January 1, 2009, and instead to increase their business credit limitation under § 38(c) and alternative minimum tax (AMT) credit limitation under § 53(c). Section 3081(b) of the Housing Act allows certain automotive partnerships to elect to be treated as making a refundable deemed payment of income tax in a certain amount. Rev. Proc. 2008–65 provides guidance regarding the effects of making the § 168(k)(4) election, the property eligible for this election, and the computation of the amount by which the business credit limitation and AMT credit limitation may be increased if the § 168(k)(4) election is made. This revenue procedure provides guidance regarding the time and manner for making the § 168(k)(4) election, the allocation of the credit limitation increases allowed by this election among members of a controlled group, the effect of the election on partnerships with corporate partners that make the § 168(k)(4) election, the application of § 168(k)(4) to S corporations, and the election under § 3081(b) of the Housing Act by certain automotive partnerships.

SECTION 2. BACKGROUND

.01 Section 168(k), amended by § 103 of the Economic Stimulus Act of 2008, Pub. L. No. 110–185, 122 Stat. 613 (February 13, 2008) (Stimulus Act), allows a 50-percent additional first year depreciation deduction (Stimulus additional first year depreciation deduction) for certain new property acquired by a taxpayer after 2007 and placed in service by the taxpayer before 2009 (before 2010 in the case of property described in § 168(k)(2)(B) or (C)).

.02 Section 3081(a) of the Housing Act added § 168(k)(4) to the Code. If a corporation elects to apply § 168(k)(4), § 168(k)(4)(A) provides that, for the corporation's first taxable year ending after March 31, 2008, and for any subsequent taxable year, the corporation forgoes the Stimulus additional first year depreciation deduction allowable under § 168(k) for eligible qualified property placed in service by the taxpayer and increases the limitations described in § 38(c) (relating to the general business credit) and § 53(c) (relating to the AMT credit). As a result, the corporation will be able to claim unused credits from taxable years beginning before January 1, 2006, that are allocable to research expenditures or AMT liabilities. Rev. Proc. 2008–65 clarifies which depreciable property is eligible qualified property for purposes of the § 168(k)(4) election and clarifies the effects of making the § 168(k)(4) election.

.03 In general, the amount by which the § 168(k)(4) election increases the business credit limitation under § 38(c) and the AMT credit limitation under § 53(c) is the bonus depreciation amount. *See* § 168(k)(4)(A)(iii). Except as provided below, the bonus depreciation amount generally is equal to 20 percent of the excess of the aggregate amount of depreciation that would be allowable for eligible qualified property if the Stimulus additional first year depreciation deduction applied to all such property, over the aggregate amount of depreciation that would be allowable for all such property if the Stimulus additional first year depreciation deduction did not apply. *See* § 168(k)(4)(C)(i). However, the bonus depreciation amount for any taxable year must not exceed the maximum increase amount reduced by the sum of the bonus depreciation amounts determined for all prior taxable years. *See* § 168(k)(4)(C)(ii). In general, the maximum increase amount is equal to the lesser of $30 million, or 6 percent of the sum of the unexpired and unused pre–2006 business credit carryforwards allocable to the research credit and AMT credit carryforwards to the current taxable year. *See* § 168(k)(4)(C)(iii). For any taxable year, the bonus depreciation amount allocated to either the business credit limitation or AMT credit limitation must not exceed the amount of unexpired and unused pre–2006 business credit carryforwards allocable to the research credit or AMT credit carryforwards less bonus depreciation amounts allocated to each limitation, respectively, for all prior taxable years. *See* § 168(k)(4)(E)(ii). To the extent that a taxpayer is allowed the business credit or AMT credit in an amount allocable to the aggregate increases in the business credit limitation or AMT credit limitation that result from the § 168(k)(4) election, such amount(s) are treated as overpayments within the meaning of § 6401(b) that are refundable to the taxpayer. *See* § 168(k)(4)(F).

.04 Rev. Proc. 2008–65 states that the Internal Revenue Service (IRS) and Treasury Department intend to publish separate guidance on the time and manner for making the § 168(k)(4) election and for specifying the allocation of the bonus depreciation amount to increase the business and AMT credit limitations under, respectively, §§ 38(c) and 53(c). This revenue procedure provides the time and manner for making the § 168(k)(4) election (see section 3 of this revenue procedure) and provides guidance on making and reporting the allocation of the bonus depreciation amount to increase the business and AMT credit limitations (see section 4 of this revenue procedure).

.05 Section 168(k)(4)(C)(iv) provides that all corporations that are treated as a single employer under § 52(a) (generally any controlled group of corporations within the meaning of § 1563(a), determined by substituting "more than 50 percent" for "more than 80 percent" each place it appears in § 1563(a)(1)) (hereinafter such group of corporations is referred to as a "controlled group") are treated as one taxpayer for purposes of § 168(k)(4) and as having elected to apply § 168(k)(4) if any member of such controlled group so elects. This revenue procedure provides guidance regarding the allocation of the bonus depreciation amount to increase the business and AMT credit limitations among members of a controlled group (see section 4.02 of this revenue procedure).

.06 Under § 168(k)(4)(G)(ii), if a corporation that makes the § 168(k)(4) election is a partner in a partnership, the electing corporate partner's distributive share of partnership items under § 702 for any eligible qualified property placed in service by the partnership must be computed by using the straight line method and without claiming the Stimulus additional first year depreciation deduction. This revenue procedure provides guidance regarding partnerships with corporate partners that make the § 168(k)(4) election (see section 5 of this revenue procedure).

.07 Except as provided in § 3081(b) of the Housing Act, only a corporation may elect to apply § 168(k)(4). Some S corporations and their shareholders are uncertain about whether § 168(k)(4) applies to them. This revenue procedure clarifies the application of § 168(k)(4) to S corporations and their shareholders (see section 6 of this revenue procedure).

.08 Section 3081(b)(1) of the Housing Act provides that an applicable partnership may elect to be treated as making a refundable deemed payment of income tax in a certain amount. This revenue procedure provides guidance regarding this election (see section 7 of this revenue procedure).

.09 Section 168(k)(4) does not modify the rules under §§ 383 and 1502. Section 383 limitations do not affect the credit amounts that a taxpayer takes into consideration in calculating its maximum increase amount under section 5.04 of Rev. Proc. 2008–65. However, the increases in the business credit limitation under § 38(c) and AMT credit limitation under § 53(c) that result from a § 168(k)(4) election do not allow a taxpayer to utilize credit carryforwards that are otherwise limited by § 383.

SECTION 3. TIME AND MANNER FOR MAKING THE § 168(k)(4) ELECTION

.01 *In General*. Except as provided in sections 3.02 and 3.03 of this revenue procedure, a corporate taxpayer must make the § 168(k)(4) election by the due date (including extensions) of the federal income tax return for the taxpayer's first taxable year ending after March 31, 2008. Even if the taxpayer does not place in service any eligible qualified property during its first taxable year ending after March 31, 2008, the taxpayer must make the § 168(k)(4) election for that taxable year if the taxpayer wishes to apply the election to eligible qualified property placed in service in subsequent taxable years. If a taxpayer is not a member of a controlled group, the taxpayer makes the § 168(k)(4) election in the manner provided in either sections 3.02, 3.03, or 3.04 of this revenue procedure. If a taxpayer is a member of a controlled group, the taxpayer makes the § 168(k)(4) election in the manner provided in section 3.05 of this revenue procedure. Failure to comply with any of the reporting or notification requirements provided by this section 3 will nullify a taxpayer's attempted § 168(k)(4) election.

.02 *Taxpayer's First Taxable Year Ending After March 31, 2008, Ends Before December 31, 2008*.

(1) *In general*. Except as provided in section 3.03 of this revenue procedure, if a taxpayer's first taxable year ending after March 31, 2008, ends before December 31, 2008, and:

(a) If the taxpayer has not filed its original federal income tax return for such taxable year on or before March 11, 2009, the taxpayer makes the § 168(k)(4) election:

(i) Either:

(I) By claiming the Stimulus additional first year depreciation deduction for any eligible qualified property placed in service by the taxpayer during such taxable year on its timely-filed federal income tax return for such taxable year. Such property must not be property in a class for which the taxpayer elects out of the Stimulus additional first year depreciation deduction under § 168(k)(2)(D)(iii); or

(II) By filing with its timely-filed federal income tax return for such taxable year the 2007 Form 4562, *Depreciation and Amortization (Including Information on Listed Property),* indicating that the taxpayer used the straight line method and did not claim the Stimulus additional first year depreciation deduction for all eligible qualified property. Taxpayers that choose to follow this section 3.02(1)(a)(i)(II) must not claim a refundable credit on their original federal income tax return. To claim the refundable credit, see section 3.02(1)(a)(ii).

(ii) By filing an amended federal income tax return for such taxable year in the manner described in section 3.02(2) on or before the due date (without regard to extensions) of the taxpayer's federal income tax return for the succeeding taxable year; and

(iii) If the taxpayer is a partner in a partnership, by notifying the partnership in accordance with section 5.02 of this revenue procedure.

(b) If the taxpayer has filed its original federal income tax return for such taxable year on or before March 11, 2009, the taxpayer makes the § 168(k)(4) election by following the procedures set forth in section 3.02(1)(a)(ii) and (iii) of this revenue procedure.

(2) *Special rules for filing amended return*. If the taxpayer filing the amended federal income tax return under section 3.02(1)(a)(ii) of this revenue procedure:

(a) is not an S corporation, the taxpayer (i) includes the amount of the refundable credit allowed by the § 168(k)(4) election on Line 5g of the Form 1120X, *Amended U.S. Corporation Income Tax Return*, (ii) makes appropriate adjustments to Lines 2, 3, and 4 of the Form 1120X to reflect the requirements of § 168(k)(4)(A) (requiring that the depreciation deduction for all eligible qualified property be determined by using the straight line method and by not claiming the Stimulus additional first year depreciation deduction), and (iii) indicates in Part II of the Form 1120X that the taxpayer is making the § 168(k)(4) election. The taxpayer should refer to the instructions to the 2008 Form 1120, *U.S. Corporation Income Tax Return*, the 2008 Form 3800, *General Business Credit*, and the 2008 Form 8827, *Credit for Prior Year Minimum Tax — Corporations,* for guidance regarding computation of the refundable credit and allocation of the bonus depreciation amount between the business and AMT credit limitations; or

(b) is an S corporation, the taxpayer (i) makes appropriate adjustments to Line 22b of the amended Form 1120S, *U.S. Income Tax Return for an S Corporation*, to reflect the results described in section 6.02 of this revenue procedure from making the § 168(k)(4) election, (ii) makes appropriate adjustments on the amended Form 1120S to reflect the requirements of § 168(k)(4)(A) (requiring that the depreciation deduction for all eligible qualified property be determined by using the straight line method and by not claiming the Stimulus additional first year depreciation deduction), and (iii) attaches a statement to the amended Form 1120S indicating that the taxpayer is making the § 168(k)(4) election and a statement showing the computation of the increases to the business credit and AMT credit limitations under, respectively, §§ 38(c) and 53(c) resulting from making the § 168(k)(4) election. The S corporation also should follow the instructions to the Form 1120S for filing an amended return.

.03 *Special Rules for Taxpayers Whose First Taxable Year Ending After March 31, 2008, Ends Before December 31, 2008*.

(1) If a taxpayer described in section 3.02(1)(b) of this revenue procedure makes the § 168(k)(4) election on its timely-filed original federal income tax return and receives a refundable credit attributable to the § 168(k)(4) election made on such return, such taxpayer must not file the amended federal income tax return required by section 3.02(1)(a)(ii) and 3.02(1)(b) of this revenue procedure. However, such taxpayer must follow the notification procedures described in section 3.02(1)(a)(iii) of this revenue procedure.

(2) If a taxpayer described in section 3.02(1) of this revenue procedure wishes to make the § 168(k)(4) election but has not placed in service any eligible qualified property during its first taxable year ending after March 31, 2008, the taxpayer makes the § 168(k)(4) election by attaching a statement to its timely-filed federal income tax return for that taxable year, indicating that the taxpayer is making the § 168(k)(4) election. If a taxpayer described in section 3.02(1)(b) of this revenue procedure wishes to make the § 168(k)(4) election but has not placed in service any eligible qualified property during its first taxable year ending after March 31, 2008, and did not attach a statement to its original federal income tax return for such taxable year indicating that the taxpayer is making the § 168(k)(4) election, the taxpayer must attach such statement to the amended federal income tax return required by section 3.02(1)(a)(ii) and 3.02(1)(b) of this revenue procedure and follow the notification procedures described in section 3.02(1)(a)(iii) of this revenue procedure.

.04 *Taxpayer's First Taxable Year Ending After March 31, 2008, Ends on or After December 31, 2008.*

(1) *C corporations.* Except as provided in section 3.04(3) of this revenue procedure, if a taxpayer's first taxable year ending after March 31, 2008, ends on or after December 31, 2008, a C corporation makes the § 168(k)(4) election by:

(a) Claiming the refundable credit on Line 32g of the 2008 Form 1120;

(b) Filing the 2008 Form 3800 or Form 8827, or both, as applicable. Taxpayers should refer to the applicable instructions to the 2008 Forms 3800 and 8827 for guidance regarding computation of the refundable credit and allocation of the bonus depreciation amount between the business credit limitation and AMT credit limitation;

(c) Filing the 2008 Form 4562, *Depreciation and Amortization (Including Information on Listed Property),* indicating that the taxpayer used the straight line method and did not claim the Stimulus additional first year depreciation deduction for all eligible qualified property; and

(d) Notifying any partnership in which the C corporation is a partner, in accordance with section 5.02 of this revenue procedure.

(2) *S corporations.* Except as provided in section 3.04(3) of this revenue procedure, if a taxpayer's first taxable year ending after March 31, 2008, ends on or after December 31, 2008, an S corporation makes the § 168(k)(4) election by:

(a) Making appropriate adjustments to Line 22b of the 2008 Form 1120S to reflect the results described in section 6.02 of this revenue procedure from making the § 168(k)(4) election;

(b) Attaching to the Form 1120S a statement indicating that the taxpayer is making the § 168(k)(4) election and a statement showing the computation of the increases to the business credit and AMT credit limitations under, respectively, §§ 38(c) and 53(c) resulting from making the § 168(k)(4) election;

(c) Filing the 2008 Form 4562 indicating that the taxpayer used the straight line method and did not claim the Stimulus additional first year depreciation deduction for all eligible qualified property; and

(d) Notifying any partnership in which the S corporation is a partner, in accordance with section 5.02 of this revenue procedure.

(3) *No eligible qualified property placed in service during first taxable year ending after March 31, 2008, ending on or after December 31, 2008.* If a taxpayer's first taxable year ending after March 31, 2008, ends on or after December 31, 2008, and the taxpayer has not placed in service any eligible qualified property during such taxable year, the taxpayer makes the § 168(k)(4) election by attaching a statement to its timely-filed federal income tax return for that taxable year, indicating that the taxpayer is making the § 168(k)(4) election.

.05 *Controlled Groups.*

(1) *Determination of Controlled Group Members.*

(a) *First taxable year ending after March 31, 2008.* For purposes of applying § 168(k)(4) and this revenue procedure for the first taxable year ending after March 31, 2008, § 168(k)(4)(C)(iv) is applied to determine the members of a controlled group (as defined in section 2.05 of this revenue procedure) on December 31, 2008, and all such members on that date are treated as a controlled group and as one taxpayer. However, if the first taxable year ending after March 31, 2008, ends on the same date for all members of a controlled group (as defined in section 2.05 of this revenue procedure), all members on such ending date are treated as a controlled group and as one taxpayer for purposes of applying § 168(k)(4) and this revenue procedure for the first taxable year ending after March 31, 2008.

(b) *Subsequent taxable years.* For purposes of applying § 168(k)(4) and this revenue procedure for any taxable year subsequent to a taxpayer's first taxable year ending after March 31, 2008, § 168(k)(4)(C)(iv) is applied to determine the members of a controlled group (as defined in section 2.05 of this revenue procedure) on December 31. However, if a taxable year subsequent to the first taxable year ending after March 31, 2008, ends on the same date for all members of a controlled group (as defined in section 2.05 of this revenue procedure), all members on such ending date are treated as a controlled group and as one taxpayer for purposes of applying § 168(k)(4) and this revenue procedure for that subsequent taxable year.

(2) *Time and manner of making the § 168(k)(4) election.*

(a) *In general.* A § 168(k)(4) election made by any member of a controlled group (as determined under section 3.05(1)(a) of this revenue procedure) is binding on all other members of the controlled group for all members' first taxable year ending after March 31, 2008. If in a subsequent taxable year, a controlled group determined under section 3.05(1)(b) of this revenue procedure (the second controlled group) includes 2 or more members of a controlled group determined under 3.05(1)(a) of this revenue procedure (the first controlled group), all members of the second controlled group that were members of the

first controlled group are deemed to have made (or not made, as the case may be) the § 168(k)(4) election of the first controlled group. Whether members of the second controlled group that were not members of the first controlled group are bound by a § 168(k)(4) election made by the first controlled group (or bound by the first controlled group's lack of a § 168(k)(4) election) is determined under the rules of section 3.05(2)(d) of this revenue procedure.

(b) *All members of a controlled group constitute a single consolidated group*. If all members of a controlled group are members of an affiliated group of corporations that file a consolidated return (hereinafter, a "consolidated group"), the common parent (within the meaning of § 1.1502–77(a)(1)(i)) of the consolidated group makes the § 168(k)(4) election on behalf of all members of the consolidated group. The common parent makes this election within the time and in the manner provided in sections 3.01, 3.02, 3.03, or 3.04 of this revenue procedure, as applicable.

(c) *All members of a controlled group do not constitute a single consolidated group*.

(i) *In general*. This section 3.05(2)(c) applies when separate federal income tax returns are filed by some or all members of a controlled group. If a controlled group includes, but is not limited to, members of a consolidated group, the consolidated group is treated as a single member of the controlled group. A member of the controlled group makes the § 168(k)(4) election by:

(I) Following the procedures in section 3.05(2)(c)(ii) or (iii) of this revenue procedure, as applicable; and

(II) Notifying all other members of the controlled group that the § 168(k)(4) election has been made. This notification must be made before the due date (excluding extensions) of the member's federal income tax return for the first taxable year ending after March 31, 2008. If the electing member makes the § 168(k)(4) election by filing an amended return under sections 3.02(1)(a)(ii) or 3.03(2) of this revenue procedure, as applicable, the electing member must notify the other members no later than the date it files an amended return containing the § 168(k)(4) election. If the electing member is described in section 3.03(1) of this revenue procedure, the electing member must notify the other members on or before March 11, 2009.

(ii) *Controlled group member's first taxable year ending after March 31, 2008, ends before December 31, 2008*. If a controlled group member's first taxable year ending after March 31, 2008, ends before December 31, 2008, that member makes the § 168(k)(4) election within the time and in the manner provided in sections 3.02 or 3.03(2) of this revenue procedure, as applicable. In addition, the member must attach to the amended federal income tax return:

(I) a statement describing the computation of the group bonus depreciation amount (as provided in section 4.02(3)(b)(ii) of this revenue procedure); and

(II) Schedule O (Form 1120X), *Consent Plan and Apportionment Schedule for a Controlled Group*, and indicating in column (f) of Part IV that the controlled group has made the § 168(k)(4) election and the portion of the group bonus depreciation amount allocated to the member (as provided in section 4.02 of this revenue procedure).

(iii) *Controlled group member's first taxable year ending after March 31, 2008, ends on or after December 31, 2008*. If a controlled group member's first taxable year ending after March 31, 2008, ends on or after December 31, 2008, that member makes the § 168(k)(4) election within the time provided in section 3.01 of this revenue procedure and in the manner provided in section 3.04 of this revenue procedure. In addition, the member must attach to the federal income tax return:

(I) a statement describing the computation of the group bonus depreciation amount (as provided in section 4.02(3)(b)(ii) of this revenue procedure); and

(II) Schedule O (Form 1120) and indicating in column (f) of Part IV that the controlled group has made the § 168(k)(4) election and the portion of the group bonus depreciation amount allocated to the member (as provided in section 4.02 of this revenue procedure).

(d) *Effect of § 168(k)(4) election for members entering or leaving a controlled group*.

(i) *Member leaves controlled group that made § 168(k)(4) election*. If a taxpayer is a member of a controlled group that makes the § 168(k)(4) election (the old group), and in a subsequent taxable year becomes a member of another controlled group that has not made the § 168(k)(4) election (the new group), the § 168(k)(4) election of the old group is not binding on the new group. The taxpayer, however, continues to be treated as having made the § 168(k)(4) election and must continue to apply §§ 167(f)(1) and 168 as if the § 168(k)(4) election was made. Similarly, if a taxpayer is a member of a controlled group that makes the § 168(k)(4) election (the old group), and in a subsequent taxable year leaves the old group and does not become a member of another controlled group, the taxpayer continues to be treated as having made the § 168(k)(4) election and must continue to apply §§ 167(f)(1) and 168 as if the § 168(k)(4) election was made.

(ii) *Taxpayer becomes a member of a controlled group after § 168(k)(4) election is made*. If a taxpayer was not a member of any controlled group when the taxpayer made the § 168(k)(4) election and in a subsequent taxable year becomes a member of a controlled group that did not make the § 168(k)(4) election, the taxpayer's election is not binding on the controlled group. The taxpayer, however, continues to be treated as having made the § 168(k)(4) election and must continue to apply §§ 167(f)(1) and 168 as if the § 168(k)(4) election was made. If a taxpayer neither made the § 168(k)(4) election nor was a member of a controlled group that made the § 168(k)(4) election, and in a subsequent taxable year becomes a member of a controlled group that made the § 168(k)(4) election, the controlled group's election does not apply to the taxpayer.

(iii) *Special rule for consolidated groups*. Notwithstanding section 3.05(2)(d)(i) and (ii) of this revenue procedure, a § 168(k)(4) election (or the lack of a § 168(k)(4) election) made by a consolidated group (or a controlled group in which the consolidated group is a member) applies to any eligible qualified property placed in service by a member of the consolidated group during a consolidated return year, even if such member is not a member of the consolidated group on the date that controlled group membership

is determined under section 3.05(1)(a) of this revenue procedure.

(iv) *Special rule for new taxpayers*. If a taxpayer was not in existence for the first taxable year for which the § 168(k)(4) election is made by a controlled group (as defined in section 3.05(1)(a) of this revenue procedure), immediately after the taxpayer's formation the taxpayer is a member of that controlled group, and the taxpayer is a member of that controlled group as determined under section 3.05(1)(b) of this revenue procedure, that controlled group's § 168(k)(4) election, if any election is made, applies to the taxpayer. For example, if a controlled group makes the § 168(k)(4) election and subsequently transfers eligible qualified property to a newly formed member of the same controlled group (on the day of its formation and on the determination date under section 3.05(1)(b) of this revenue procedure), such property remains eligible qualified property to which the § 168(k)(4) election applies and must be depreciated using the straight line method.

(v) *Overlapping groups*. For purposes of this revenue procedure, for any taxable year a taxpayer will not be considered a member of more than one controlled group. A taxpayer is considered a member of a single controlled group in accordance with the principles of § 1.1563–1T(c) of the temporary Income Tax Regulations.

.06 *Limited Relief for Late Election*.

(1) *Automatic 6-Month Extension*. Pursuant to § 301.9100–2(b) of the Procedure and Administration Regulations, an automatic extension of 6 months from the due date of the federal tax return (*excluding* extensions) for the taxpayer's first taxable year ending after March 31, 2008, is granted to make the § 168(k)(4) election, provided the taxpayer timely filed the taxpayer's federal tax return for the taxpayer's first taxable year ending after March 31, 2008, and the taxpayer satisfies the requirements in § 301.9100–2(c) and (d).

(2) *Other Extensions*. A taxpayer that fails to make the § 168(k)(4) election for the taxpayer's first taxable year ending after March 31, 2008, as provided in section 3.01, 3.02, 3.03, 3.04, 3.05, or 3.06(1) of this revenue procedure but wants to do so must file a request for an extension of time to make the election under the rules in § 301.9100–3.

SECTION 4. ALLOCATION OF THE BONUS DEPRECIATION AMOUNT

.01 *In General*. A taxpayer allocates the bonus depreciation amount between the business credit limitation under § 38(c) and the AMT credit limitation under § 53(c) by the due date (including extensions) of the taxpayer's federal income tax return for the taxable year. Except as provided in section 4.02 of this revenue procedure, the taxpayer specifies this allocation by reporting the amounts on the appropriate lines of the Forms 3800 and 8827. However, if a taxpayer's first taxable year ending after March 31, 2008, ends before December 31, 2008, the taxpayer makes and specifies the allocation for such taxable year on the amended federal income tax return filed pursuant to section 3.02(1)(a)(ii) or 3.03(2) of this revenue procedure. A different allocation may be used for different taxable years.

.02 *Controlled Groups*.

(1) *In general*. If a taxpayer is a member of a controlled group (as determined under section 3.05(1) of this revenue procedure) and any member of the controlled group makes the § 168(k)(4) election, the allocation of the group bonus depreciation amount to each member of the controlled group must be determined in accordance with section 4.02(2) or 4.02(3) of this revenue procedure, as applicable. This allocation of the group bonus depreciation amount for any taxable year is reported on Schedule O (Form 1120) (or a similar statement) that is attached to the federal income tax return or amended federal income tax return for that taxable year, as the case may be, filed by each member of the controlled group within the time provided in section 4.01 of this revenue procedure. However, if a member of a controlled group does not have the information necessary to allocate the group bonus depreciation amount for a taxable year on or before the due date (including extensions) of the member's federal income tax return for the taxable year, the member must make and specify the allocation for that taxable year on an amended federal income tax return for that taxable year that is filed on or before the due date (including extensions) of the member's federal income tax return for the succeeding taxable year. The allocation described in this section 4.02 of this revenue procedure applies to all controlled group members who have made a section 168(k)(4) election or who are treated as having made such an election pursuant to section 3.05 of this revenue procedure.

(2) *All members of a controlled group constitute a single consolidated group*. If all members of a controlled group are members of a consolidated group (as defined in section 3.05(2)(b) of this revenue procedure), the consolidated group determines its bonus depreciation amount in accordance with section 5 of Rev. Proc. 2008–65, treating the consolidated group as a single taxpayer. The allocation of the bonus depreciation amount among the members of the consolidated group must be pursuant to an allocation by the common parent in accordance with the principles of § 1502 and its accompanying regulations.

(3) *All members of a controlled group do not constitute a single consolidated group*.

(a) *In general*. This section 4.02(3) applies when separate federal income tax returns are filed by some or all members of a controlled group. If a controlled group includes, but is not limited to, members of a consolidated group, the consolidated group is treated as a single member of the controlled group. The allocation of the bonus depreciation amount among the members of the controlled group must be made pursuant to section 4.02(3)(b) or (c) of this revenue procedure, as applicable. Any group bonus depreciation amount allocated to a consolidated group under this section 4.02(3) is allocated among the members of the consolidated group pursuant to an allocation by the common parent in accordance with the principles of § 1502 and its accompanying regulations.

(b) *Allocation of group bonus depreciation amount*.

(i) *In general*. The bonus depreciation amount allocable to a member of a controlled group is determined by arriving at each member's proportionate share of the group bonus depreciation amount, unless all members of the group agree to an alternative allocation under section 4.02(3)(c) of this revenue procedure.

(ii) *Computation of group bonus depreciation amount*. The group bonus depreciation amount is computed as follows:

(A) First, calculate the bonus depreciation amount in the manner provided in sec-

tions 5.01 and 5.02 of Rev. Proc. 2008–65 treating the controlled group as a single taxpayer. To calculate this amount, the eligible qualified property placed in service by each member of the controlled group during the taxable year is taken into account. However, if some or all members of the controlled group have different taxable years, the eligible qualified property to be taken into account is such property placed in service by each member of the controlled group after March 31, 2008, and before January 1, 2009 (or, for taxable years ending in 2009 or thereafter, during such calendar year);

(B) Second, calculate the maximum increase amount in section 5.04 of Rev. Proc. 2008–65, the business credit increase amount in section 5.05 of Rev. Proc. 2008–65, and the AMT credit increase amount in section 5.06 of Rev. Proc. 2008–65 by taking into account the sum of all member's pre–2006 unexpired and unused research credits and AMT credits as of the last day of the taxable year. However, if the taxable years of some or all members of the controlled group end on different dates, the sum of all members' pre–2006 unexpired and unused research credits and AMT credits as of the last day of each member's last taxable year ending on or before December 31 (determined for each calendar year) are taken into account; and

(C) Finally, calculate the maximum amount in section 5.03 of Rev. Proc. 2008–65 to arrive at the group bonus depreciation amount for the taxable year.

(iii) *Member's proportionate share of group bonus depreciation amount*. Each member's proportionate share of the group bonus depreciation amount is equal to the group bonus depreciation amount determined under section 4.02(3)(b)(ii)(C) of this revenue procedure multiplied by a fraction, the numerator of which is the amount such member contributed to the total computed under section 4.02(3)(b)(ii)(A) of this revenue procedure and the denominator of which is the total computed under section 4.02(3)(b)(ii)(A) of this revenue procedure. If the taxable years of some or all members of the controlled group end on different dates, all (if any) of a member's proportionate share of group bonus depreciation amount must be claimed by such member in the taxable year of the member to which such share relates (determined by reference to the eligible qualified property's placed in service date).

(c) *Allocation agreement*. In lieu of the method provided in section 4.02(3)(b) of this revenue procedure, the controlled group may allocate the group bonus depreciation amount (computed as provided in section 4.02(3)(b)(ii) of this revenue procedure) to any member in any proportion that all members of the controlled group agree. Any agreement, and the amounts allocated to all members pursuant to such agreement, must be shown on Schedule O (Form 1120) (or a similar statement) within the time and in the manner provided in section 4.02(1) of this revenue procedure. A subsequent agreement may be filed (shown on Schedule O (or similar statement) within the time and in the manner provided in section 4.01(1) of this revenue procedure) that varies the group bonus depreciation amounts allocated to controlled group members in taxable years after the group's first taxable year ending after March 31, 2008.

.04 *Example 1*. A, B, and C are corporations that, on December 31, 2008, are the only members of the ABC controlled group. A's first taxable year ending after March 31, 2008, ends on June 30, 2008. B and C's first taxable year ending after March 31, 2008, ends on December 31, 2008. As of June 30, 2008, A has $300 million of unexpired and unused pre–2006 research and AMT credit carryforwards. As of December 31, 2008, B and C each have $300 million of unexpired and unused pre–2006 research and AMT credit carryforwards. Therefore, as of December 31, 2008, the ABC controlled group has $900 million of unexpired and unused pre–2006 research and AMT credit carryforwards.

On May 1, 2008, A and B each placed in service eligible qualified property that costs $50 million and is 5-year property under § 168(e). On September 1, 2008, A also placed in service eligible qualified property that costs $100 million and is 5-year property under § 168(e). A, B, and C depreciate their 5-year property using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. For each of the properties placed in service on May 1, 2008, the difference between the aggregate amount of depreciation that would be allowable for the property if the Stimulus additional first year depreciation deduction applied over the aggregate amount of depreciation that would be allowable for the property if the Stimulus additional first year depreciation deduction did not apply is $20 million. That amount for the property placed in service by A on September 1, 2008, is $40 million.

For its taxable year ending June 30, 2008, A makes the § 168(k)(4) election by filing an amended federal income tax return (Form 1120X) on January 15, 2009, in the manner provided by section 3.05(2)(c)(ii) of this revenue procedure. At the time A's Form 1120X is filed, A, B, and C have not entered into any agreement regarding the allocation of the bonus depreciation amount among them.

(1) Under section 4.02(3)(b)(ii) of this revenue procedure, the ABC controlled group's group bonus depreciation amount is 20 percent of $80 million, or $16 million. Under section 4.02(3)(b)(ii) of this revenue procedure, because $16 million is less than (i) $30 million and (ii) 6 percent of the ABC controlled group aggregate unexpired and unused pre–2006 research and AMT credits (.06 X $900 million, or $54 million), the ABC controlled group is not limited by the maximum increase amount. Thus, under section 4.02(3)(b)(ii)(C) of this revenue procedure, the ABC controlled group's group bonus depreciation amount for the period ending on December 31, 2008, is $16 million.

(2) Under section 4.02(3)(b)(iii) of this revenue procedure, A's proportionate share of the group bonus depreciation amount is $12 million ($16 million X ($60 million/$80 million)). For its taxable year ending June 30, 2008, A may increase its business credit and AMT credit limitations under, respectively, §§ 38(c) and 53(c) by, and claim a refundable credit of, $4 million ($12 million X ($20 million/$60 million)) on its Form 1120X. For its taxable year ending June 30, 2009, A may increase its business credit and AMT credit limitations by $8 million ($12 million X ($40 million/$60 million)) (plus any group bonus depreciation amount calculated for the group and allocated to A for the period January 1, 2009, through December 31, 2009). In addition, B's proportionate share of the group bonus depreciation amount is $4 million ($16 million X ($20 million/$80 million)). B may increase its business credit and AMT credit limitations under, respectively, §§ 38(c) and 53(c) by, and claim a refundable credit of, $4 million on its original federal income tax return for its taxable year ending December 31, 2008. The ABC controlled group then has a maximum amount of $14 million of bonus depreciation amount ($30 million less the $16 million allocated to A and B) remaining to be used for eligible qualified property placed in service by the ABC controlled group after December 31, 2008 (*e.g.*, long-lived property or certain aircraft). The result of this Example is the same if, instead of a single corporation, A represents a consolidated group of corporations, except the $12 million of group bonus depreciation amount allocated to A is reallocated within the A consolidated group pursuant to an allocation by the common parent in accordance with the principles of § 1502 and its accompanying regulations.

(b) *Example 2*. The facts are the same as in *Example 1*, except A has no pre–2006 business credit or AMT credit carryforwards as of the last day of its June 30, 2008, taxable year and C has $600 million of pre–2006 research credit and AMT credit carryforwards as of December 31, 2008. Although A may increase its §§ 38(c) and 53(c) credit limitations for its taxable year ending June 30, 2008, A has no credit carryforwards that A may use to claim a refundable credit. Absent an allocation agreement, B and C may not be allocated any portion of the bonus depreciation amount that was allocated to A under section 4.02(3)(b)(iii) of this revenue procedure. The ABC controlled group, therefore, has $26 million of group bonus depreciation ($30 million less the $4 million

allocated to B) remaining to be used for eligible qualified property placed in service by the ABC controlled group after December 31, 2008.

(c) *Example 3*. The facts are the same as *Example 2*, except A, B, and C have entered into an agreement regarding the allocation of the group bonus depreciation amount. The agreement provides that C will be allocated all of the group bonus depreciation amount. C, therefore, may increase its business and AMT credit limitations under, respectively, §§ 38(c) and 53(c) by, and claim a refundable credit of, $16 million on its original income tax return for its taxable year ending December 31, 2008. Neither A nor B may claim the refundable credit for their taxable years ending June 30, 2008, and December 31, 2008, respectively. The ABC controlled group has a maximum amount of $14 million of bonus depreciation amount ($30 million less the $16 million allocated to C) remaining to be used for eligible qualified property placed in service by the ABC controlled group after December 31, 2008.

SECTION 5. PARTNERSHIPS WITH CORPORATE PARTNERS THAT MAKE THE § 168(k)(4) ELECTION

.01 *Partnership's Information to Partner*.

(1) *In general*. If a corporation makes the § 168(k)(4) election and is a partner in a partnership (electing corporate partner), the partnership must provide the electing corporate partner with sufficient information to apply § 168(k)(4)(G)(ii) in determining its distributive share of partnership items under § 702 relating to any eligible qualified property placed in service by the partnership during the taxable year. This information must be provided in the time and manner required by § 6031(b) and § 1.6031(b)–1T(a)(3)(ii) and (b). If the partnership has filed its federal tax return for its first taxable year ending after March 31, 2008, on or before February 9, 2009, and did not provide the electing corporate partner with sufficient information to apply § 168(k)(4)(G)(ii), the partnership must provide such information to the electing corporate partner by the later of May 11, 2009, or 90 calendar days after receiving the corporate partner's notification as required by section 5.02 of this revenue procedure.

(2) *Determination of Electing Corporate Partner's Distributive Share*. A partnership must compute an electing corporate partner's distributive share of depreciation and make other correlative adjustments attributable to eligible qualified property placed in service by the partnership using any reasonable method that is consistent with the intent of § 168(k)(4)(G)(ii). For example, the partnership may apply principles similar to those in § 743(b) and the regulations thereunder to the extent appropriate to make adjustments to the basis of the eligible qualified property and the electing corporate partner's distributive share of depreciation attributable to such property.

.02 *Electing Corporate Partner's Notification to Partnership*. An electing corporate partner must notify the partnership, in writing, that the corporate partner is making the § 168(k)(4) election. This notification must be made on or before the due date (including extensions) of the electing corporate partner's federal income tax return for its first taxable year ending after March 31, 2008. If the electing corporate partner makes the § 168(k)(4) election by filing an amended return under sections 3.02(1)(a)(ii) or 3.03(2) of this revenue procedure, as applicable, the electing corporate partner must notify the partnership on or before the date it files an amended return containing the § 168(k)(4) election. If the electing corporate partner is described in section 3.03(1) of this revenue procedure, the electing corporate partner must notify the partnership on or before March 11, 2009. Failure to comply with the notification requirement provided by this section 5.02 will nullify a taxpayer's attempted § 168(k)(4) election.

SECTION 6. APPLICATION OF § 168(k)(4) TO S CORPORATIONS AND THEIR SHAREHOLDERS

.01 *In General*. An S corporation is allowed to make the § 168(k)(4) election. However, any business or AMT credit limitation increases that result from a § 168(k)(4) election are applied at the corporate level and not at the shareholder level. Thus, a shareholder of an S corporation must not increase the shareholder's business or AMT credit limitations under, respectively, §§ 38(c) and 53(c) by the bonus depreciation amount that results from a § 168(k)(4) election made by the S corporation.

.02 *Applicability to S Corporations*. Under § 1374(a), an S corporation is subject to tax on its recognized built-in gains during its taxable year. In general, under § 1374(b)(3)(B), an S corporation is allowed as a credit against the § 1374(a) tax any business and AMT credit carryforwards that arose in a taxable year in which the corporation was a C corporation. The credits allowed by § 1374(b)(3)(B) are subject to three limitations: the business credit limitation in § 38(c), the AMT credit limitation in § 53(c), and the amount of the § 1374(a) tax. Sections 1374(b)(3)(B) and 1.1374–6(b). If an S corporation makes the § 168(k)(4) election, the S corporation calculates its bonus depreciation amount as provided in section 5 of Rev. Proc. 2008–65, increases its business and AMT credit limitations, uses the straight line method for depreciating its eligible qualified property, and must not claim the Stimulus additional first year depreciation deduction for such property. However, the § 168(k)(4) election does not increase the S corporation's § 1374(b)(3)(B) limitation. Therefore, if the § 168(k)(4) election is made, an S corporation may not claim business credits or AMT credits in excess of its § 1374(a) tax for the taxable year. Any credits allowed as a result of the increase in the business or AMT credit limitations, which may be used only as an additional credit against the § 1374(a) tax, are not refundable to the S corporation.

.03 *Time and Manner for Making the § 168(k)(4) Election*. An S corporation makes the § 168(k)(4) election within the time and in the manner provided in section 3 of this revenue procedure.

SECTION 7. APPLICATION OF § 3081(b) OF THE HOUSING ACT

.01 *In General*. Section 3081(b)(1) of the Housing Act allows an applicable partnership to elect to be treated as making a deemed payment of income tax (the "deemed payment") in the amount determined under section 7.03 of this revenue procedure. This election applies to any taxable year during which eligible qualified property is placed in service by the applicable partnership. See section 3 of Rev. Proc. 2008–65 for determining which depreciable property qualifies as eligible qualified property. Notwithstanding any other provision of the Code, the deemed payment is refundable to the applicable partnership and may not be treated as an offset or credit against any tax liability of the applicable partnership or any partner. Section 3081(b)(2)(A) of the Housing Act.

.02 *Definition of Applicable Partnership*. An applicable partnership is a domestic partnership that was formed effective on August 3, 2007, and will produce in excess of 675,000 automobiles during the period beginning on January 1, 2008, and ending on June 30, 2008. Section 3081(b)(4)(A) of the Housing Act.

.03 *Computation of the Deemed Payment*. Pursuant to § 3081(b)(1)(A) and (b)(3) of the Housing Act, the amount of the deemed payment for the taxable year is equal to the lesser of:

(1) 20 percent of the excess (if any) of the aggregate amount of depreciation that would be allowable for eligible qualified property placed in service by the applicable partnership during the taxable year if the Stimulus additional first year depreciation deduction applied to all such property, over the aggregate amount of depreciation that would be allowable for all eligible qualified property placed in service by the applicable partnership during the taxable year if the Stimulus additional first year depreciation deduction did not apply to any such property. For purposes of computing this amount, the rules in section 5.02 of Rev. Proc. 2008–65 apply;

(2) the applicable partnership's research credit (determined under § 41) for the taxable year; or

(3) $30 million less any deemed payments made by the applicable partnership under § 3081(b) of the Housing Act for all prior taxable years.

.04 *Effect of Making Election under § 3081(b) of the Housing Act*. If an applicable partnership makes the election to apply § 3081(b) of the Housing Act (the "§ 3081(b) Housing Act election"), the applicable partnership (1) must determine the depreciation deduction for any eligible qualified property placed in service by the partnership during the taxable year by using the straight line method and by not claiming the Stimulus additional first year depreciation deduction, and (2) must reduce the amount of its research credit for the taxable year by the amount of the deemed payment for the taxable year. Section 3081(b)(1)(B) and (C).

.05 *Time and Manner of Making § 3081(b) Housing Act Election*.

(1) *Time for making election*. An applicable partnership must make the § 3081(b) Housing Act election by the due date (including extensions) of the Form 1065, *U.S. Return of Partnership Income*, for the partnership's first taxable year ending after March 31, 2008. Even if an applicable partnership does not place in service any eligible qualified property during its first taxable year ending after March 31, 2008, the partnership must make the § 3081(b) Housing Act election for that taxable year if the partnership wishes to apply the election to eligible qualified property placed in service in subsequent taxable years.

(2) *Manner of making election*. An applicable partnership makes the § 3081(b) Housing Act election by making the following statement (printed legibly or typed) on its timely-filed Form 1065 for the first taxable year ending after March 31, 2008, in the space below the signature section of the Form 1065: "A refund in the amount of $[*Insert Amount*] is requested pursuant to Section 3081(b)(1) of P. L. 110–289, the Housing and Economic Recovery Act of 2008."

(3) *Limited Relief for Late Election*.

(a) *Automatic 6-Month Extension*. Pursuant to § 301.9100–2(b) of the Procedure and Administration Regulations, an automatic extension of 6 months from the due date of the federal tax return (*excluding* extensions) for the applicable partnership's first taxable year ending after March 31, 2008, is granted to make the § 3081(b) Housing Act election, provided the applicable partnership timely filed its federal tax return for its first taxable year ending after March 31, 2008, and the applicable partnership satisfies the requirements in § 301.9100–2(c) and (d).

(b) *Other Extensions*. An applicable partnership that fails to make the § 3081(b) Housing Act election for the applicable partnership's first taxable year ending after March 31, 2008, as provided in section 7.05(1) and (2) of this revenue procedure or in section 7.05(3)(a) of this revenue procedure but wants to do so must file a request for an extension of time to make the election under the rules in § 301.9100–3.

.06 *Filing of Form 1065*.

(1) *In general*. For the taxable year in which the § 3081(b) Housing Act election is made (the "year of election") and for any subsequent taxable year in which an applicable partnership is claiming a refundable deemed payment under § 3081(b) of the Housing Act, the partnership's Form 1065 and related forms and schedules (including Schedules K–1) must not be filed electronically. Further, the applicable partnership must mail the Form 1065 and related forms and schedules (including Schedules K–1) to: Internal Revenue Service, 1973 N. Rulon White Blvd., Attn: Audrey Martinez Mail Stop 1120, Ogden, UT 84201.

(2) *Taxable years subsequent to the year of election*. If the applicable partnership claims a refundable deemed payment under § 3081(b) of the Housing Act for any taxable year subsequent to the year of election, the partnership must make the following statement (printed legibly or typed) on its Form 1065 for that taxable year in the space below the signature section of the Form 1065: "A refund in the amount of $[*Insert Amount*] is requested pursuant to Section 3081(b)(1) of P. L. 110–289, the Housing and Economic Recovery Act of 2008."

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2008–65 is amplified and supplemented.

SECTION 9. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–2133. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 3, 4, 5, and 7. This information is necessary and will be used to determine whether the taxpayer is eligible to make the § 168(k)(4) election and the amount by which the election increases the taxpayer's applicable credit limitations. The collections of information are required for the taxpayer to make the § 168(k)(4) election. The likely respondents are the following: business and other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 2,700 hours.

The estimated annual burden per respondent/recordkeeper varies from 0.25 hours to 1 hour, depending on individual circumstances, with an estimated average of 0.5 hours. The estimated number of respondents is 5,400. The estimated annual frequency of responses is on occasion.

SECTION 10. EFFECTIVE DATE

This revenue procedure is effective January 23, 2009.

SECTION 11. DRAFTING INFORMATION

The principal author of this revenue procedure is Jeffrey T. Rodrick of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Rodrick at (202) 622–4930 (not a toll-free call).