

Under § 409(h)(2)(B), an ESOP that provides for distributions in the form of securities of an employer that is an S corporation is permitted to provide that the S corporation stock included in the distribution is subject to a repurchase requirement. Thus, an ESOP is permitted to provide that any stock in an S corporation that is distributed is subject to immediate repurchase by the S corporation upon a direct rollover of the stock from the ESOP to an IRA.

SECTION 3. SCOPE

This revenue procedure sets forth certain requirements related to an ESOP's distribution of S corporation stock to a participant where the participant elects to have the S corporation stock distributed to an IRA in a direct rollover. If these requirements are satisfied, the Service will accept the position that the distribution does not affect the S corporation's election to be taxed as an S corporation.

SECTION 4. APPLICATION

The Service will accept the position that an S corporation's election is not affected as a result of an ESOP's distribution of S corporation stock where the participant directs that such stock be distributed to an IRA in a direct rollover, provided that:

.01 The terms of the ESOP require that the S corporation repurchase the stock immediately upon the ESOP's distribution of the stock to an IRA;

.02 Either, pursuant to the terms of the ESOP, the S corporation actually repurchases the S corporation stock contemporaneously with, and effective on the same day as, the distribution, or, pursuant to the terms of the ESOP, the ESOP is permitted to assume the rights and obligations of the S corporation to repurchase the S corporation stock immediately upon the ESOP's distribution of the stock to an IRA and the ESOP actually repurchases the S corporation stock contemporaneously with, and effective on the same day as, the distribution; and

.03 No income (including tax-exempt income), loss, deduction, or credit attributable to the distributed S corporation stock under § 1366 is allocated to the participant's IRA.

SECTION 5. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2003-23 is modified and superseded.

SECTION 6. DRAFTING INFORMATION

The principal authors of this revenue procedure are Audrey W. Ellis of the Office of Associate Chief Counsel (Passthroughs and Special Industries), John Ricotta of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) and Robert Gertner of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding the S corporation aspects of the revenue procedure, contact Ms. Ellis at (202) 622-3060 (not a toll-free call). For further information regarding the employee plans aspects of the revenue procedure, contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free call) between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday or contact Mr. Gertner at (202) 283-9888 (not a toll-free call).

26 CFR 601.201: Rulings and determination letters. (Also Part I, § 412.)

Rev. Proc. 2004-15

SECTION 1. PURPOSE

The purpose of this revenue procedure is to outline the procedures of the Internal Revenue Service with respect to applications for waivers of the minimum funding standard under either § 412(d) of the Internal Revenue Code or section 303 of the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. 93-406, 1974-3 C.B. 1, 41.

SECTION 2. REQUESTS FOR WAIVERS OF THE MINIMUM FUNDING STANDARD FOR DEFINED BENEFIT PLANS

.01 Submission.—Requests for waivers of the minimum funding standard for defined benefit plans must be submitted to:

Employee Plans
Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

The user fee required by Rev. Proc. 2004-8, 2004-1 I.R.B. 240, or its successors, must be sent with such requests.

.02 Necessary Procedural Documents.—A request will not be considered unless it complies with (1) through (5) below.

(1) The request must be signed by the taxpayer maintaining the plan (hereinafter referred to as "applicant") or an authorized representative of the applicant who either must be identified in (a), (b), or (c) of subsection 9.02(11) of Rev. Proc. 2004-4, 2004-1 I.R.B. 125, or must be an enrolled actuary within the meaning of § 7701(a)(35) of the Code. Where an authorized representative signs the request or will appear before the Service in connection with the request, a Form 2848, *Power of Attorney and Declaration of Representative*, must be submitted with the request. For multiemployer plans, the request must be made by the Board of Trustees (which shall be deemed to be the applicant) or by an authorized representative of the Board of Trustees. An individual is not an authorized representative of the applicant merely on account of being the administrator or trustee of the plan.

(2) The request also must contain a declaration in the following form: "Under the penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the request are true, correct, and complete." This declaration must be signed by the applicant (e.g., an authorized officer of a corporation). The signature of an individual with a power of attorney will not suffice for the declaration. See section 9.02(13) of Rev. Proc. 2004-4, *supra*, p. 142.

(3) Because a request for a waiver constitutes a request for a ruling, compliance with § 6110 of the Code is also required. Section 601.201 of the Statement of Procedural Rules sets forth the requirements

applicable to requests for rulings and determination letters which are subject to § 6110. Section 601.210(e) furnishes specific instructions to applicants. The applicant must also pay the user fee required by Rev. Proc. 2004-8 or its successors.

The applicant must provide with the request either a statement of proposed deletions and the statutory basis for each proposed deletion, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted.

(4) The applicant must provide a copy of a written notification that an application for a waiver of the minimum funding standard under § 412(d) of the Code has been submitted to the Service. The original of the written notification must bear a signature by an appropriate officer of the applicant and must be in substantially the form set forth in the Model Notice found in the Appendix A to this revenue procedure. The Service does not require the applicant to furnish any information in addition to that required by the Model Notice in the Appendix A to plan participants, beneficiaries, alternate payees, or employee organizations as part of the waiver application process, but additional information may, of course, be provided by the applicant pursuant to the collective bargaining process or otherwise.

The application must state that such notice was hand delivered or mailed to the last known address of each employee organization, participant, beneficiary, and alternate payee (within the meaning of § 414(p)(8) of the Code) within 14 days prior to the date of the application. If the applicant makes a reasonable effort to carry out the provisions of this paragraph, failure of an employee organization, participant, beneficiary, or alternate payee to receive the notice will not cause the applicant to fail the notice requirement. However, merely posting the notice on a bulletin board is not sufficient to satisfy this requirement.

.03 Necessary Waiver Information.—The applicant must furnish appropriate evidence that the employer and all other entities included within the controlled group of which the employer is a member are unable to satisfy the minimum funding standard for a plan year without

temporary substantial business hardship and that application of the standard would be adverse to the interest of plan participants in the aggregate. In the case of a multiemployer plan, the applicant must furnish appropriate evidence that 10 percent or more of the number of employers contributing to or under the plan are unable to satisfy the minimum funding standard for a plan year without substantial business hardship and that application of the standard would be adverse to the interest of plan participants in the aggregate. What constitutes appropriate evidence will depend on the facts and circumstances of each case. A response must be furnished for each of the subsections (1) through (7) below. In certain cases some of the material described in subsections (1) through (7) may be inapplicable, unavailable, inappropriate or burdensome to furnish. In such cases, the applicant should furnish a statement indicating why the material for a particular subsection is inapplicable, unavailable, inappropriate or burdensome.

(1) General facts concerning the employer.

A brief statement should be submitted concerning: (a) the history of the employer and its primary business; (b) the ownership of the employer and any recent or contemplated changes (such as acquisitions, mergers, discontinuances of operations) which might have a bearing on the employer's organization or financial condition; (c) whether the employer is aggregated with any other entity for purposes of §§ 414(b), (c), (m) or (o) of the Code; and (d) whether the plan is also maintained by employers described in (c) above or any other employers.

(2) The financial condition of the employer.

The annual financial report of the employer and each of the other entities included within the controlled group of which the employer is a member for each of the two fiscal years that commenced prior to any plan year for which a waiver is requested and the annual financial report for each fiscal year that commenced with or within each plan year for which a waiver is requested must be submitted. This submission must include at least the balance

sheet, profit and loss statement, cash flow statement, and notes to the financial statement. Recent interim financial reports for each of the controlled group members, if available, should also be submitted along with an interim financial report covering the corresponding period for the previous year. If the employer submits financial reports to the Securities and Exchange Commission, these reports should be submitted for the same periods as the annual financial reports. Preferably, the financial report should include certified financial statements. If certified financial statements have not been prepared, an uncertified report is acceptable. If neither certified nor uncertified reports are available, copies of the company's federal income tax returns, including all of the supporting schedules, must be submitted. (See also paragraph 5.)

(3) Executive compensation arrangements (not required for multiemployer plans)

For each person who is an officer (within the meaning of Q&A T-13 of § 1.416-1 of the Income Tax Regulations) or director of the applicant or any entity aggregated with the applicant for purposes of §§ 414(b), (c), (m), or (o) of the Code ("aggregated entities"), provide a detailed statement concerning all amounts that the applicant or any aggregated entity has paid or will pay to or for the benefit of such person during the plan year for which the request is made and the immediately preceding 24 months. For this purpose, if the number of employees (including part-time employees) of the applicant and all aggregated entities as of the first day of the plan year for which the request is made is: (a) not more than 30, no more than three persons shall be treated as officers; (b) more than 30 but not more than 100, no more than 10% of such employees (rounded to the next integer) shall be treated as officers; or (c) more than 100, no more than 10 of such employees shall be treated as officers. In each case, this limited number of officers shall be comprised of those officers to whom or for whose benefit the applicant and all aggregated entities have paid or will pay the largest such amounts during such period. In addition, provide information concerning amounts paid or to be paid during such period to or for

the benefit of up to five additional persons who are former officers or directors of the applicant or any aggregated entity or who are aggregated with any such former officer or director for purposes of §§ 414(b), (c), (m) or (o) of the Code and who would be included in such limited number of officers if they were officers of the applicant.

The statement should include, among other payments, amounts paid with respect to: (a) salary; (b) non-qualified deferred compensation; (c) fringe benefits, perquisites, and other personal benefits; (d) bonuses and incentive compensation, including amounts deferred from previous periods; (e) money or other property set aside in any trust, escrow, insurance policy, or other similar funding vehicle during the years in question for the benefit of any such person, whether or not included in such person's income; (f) grants of stock options, restricted stock, or other equity compensation; (g) money or other property paid by reason of the exercise of any stock option or stock appreciation right or pursuant to any phantom stock plan or agreement; (h) money or other property paid pursuant to any other long-term incentive plan; (i) loans to or for the benefit of such persons and any loan repayments during such period; (j) money or other property paid in connection with any change in control or termination of employment or service and (k) any other compensation to or for the benefit of such persons that has affected or will affect the cash flow of the applicant or any aggregated entity for such period. Applicants may omit information regarding any plan that satisfies the qualification requirements of § 401(a) of the Code and any other pension, profit sharing, employee stock ownership, employee stock purchase, group life, health, hospitalization, medical reimbursement, fitness or wellness, employee relocation, severance, or similar plan that does not discriminate in scope, terms, or operation in favor of officers or directors of the applicant and that is available generally to all salaried employees.

(4) Nature and extent of the business hardship. An explanation of the nature and extent of the business hardship should include the following.

(a) A discussion of the underlying reasons which have led to the current situation (such as declining sales, unexpected losses, labor disputes, etc.).

(b) A statement concerning the prospects for recovery, including reasons why such recovery is likely.

(c) A statement describing the actions taken or planned to effect recovery.

(d) A statement as to when and to what extent it is anticipated that required contributions to the plan can reasonably be expected to resume.

(e) Financial projections and collateral information for certain employers (not required for multiemployer plans)

If the sum of the outstanding balances of any amortization bases established under § 412(b)(2)(C) of the Code for waivers granted to the plan for any prior plan years (calculated as of the first day of the plan year for which a new waiver is being requested) when added to the amount for which a waiver is currently being requested, equals or exceeds \$1,000,000, items (4)(b) & (c) should be supported by financial projections, for not less than the next five years, for each trade or business of the plan sponsor, along with any supporting text and schedules. These projections should include revenues, expenses, and cash flow statements, along with all major strategic and economic assumptions used in deriving them. The cash flow projections should include capital expenditures, forecasted contributions to the pension plan(s), long-term debt repayments, and any mandatory debt repayments. Any projections based on a significant strategic or financial turnaround should fully explain this turnaround. Also, a brief description should be included of what collateral, if required, would be available to secure any waived contributions.

The Service may request additional information, including items listed in § 412(d)(2) of the Code.

(5) Facts concerning the pension plan. For each pension plan for which a waiver is requested, the following information should be supplied.

(a) The name of the plan, the plan's identification number, and file folder number (if any).

(b) The date the plan was adopted.

(c) The effective date of the plan.

(d) The classes of employees covered. If the only participants are owners of the employer or relatives of owners, so state.

(e) The number of employees covered.

(f) A copy of the current plan document and the most recent summary plan description.

(g) A brief description of all plan amendments adopted during the year for which the waiver is requested and the previous four years which affect plan costs, including the approximate effect of each amendment on such costs.

(h) The most recent actuarial report plus any available actuarial reports for the preceding two plan years. Also, if not shown in that report, the present value of accrued benefits, present value of vested benefits, and fair market value of assets (excluding contributions not yet paid).

(i) How the plan is funded (*i.e.*, trust fund, individual insurance policies, etc.).

(j) A list of the contributions actually paid in each month, from the twenty-fourth month prior to the beginning of the plan year for which the waiver is requested through the date of the request and the plan year to which the contributions were applied, with the employee contributions and the employer contributions listed separately.

(k) The plan year for which the waiver is requested (*e.g.*, 1/1/03-12/31/03).

(l) The approximate contribution required to meet the minimum funding standard and the approximate amount requested to be waived. For defined benefit plans, this amount should be determined by the plan's enrolled actuary.

(m) A copy of the most recently completed *Annual Return/Report of Employee Benefit Plan* (Form 5500 series, as applicable) and in the case of a defined benefit plan, a copy of the corresponding Actuarial Information schedule (Schedule B of Form 5500).

(n) Whether the plan is subject to Title IV of ERISA.

(o) A copy of each ruling letter that waived the minimum funding standard during the last 15 plan years, a statement of the amount waived for each plan year, and a statement of the outstanding balance of the amortization base for each waived funding deficiency. The outstanding balance of the amortization base for each waiver is to be calculated as of the first day of the plan year for which a waiver is being requested.

(6) Other pension, profit-sharing, or stock bonus plans. If the employer maintains more than one plan, an outline of the essential facts for each such plan should be submitted. This should include:

(a) A brief description of the plan, including the name of the plan and its plan year.

(b) The number of employees covered.

(c) The classes of employees covered.

(d) The approximate annual contribution required.

(e) The amount of contributions that have been made, or are intended to be made, for any plan year of such other plan commencing in, or ending in, the plan year for which the waiver is requested.

(f) A statement as to whether a waiver request is contemplated for the plan.

(7) Other information.

(a) Describe the nature of any matters pertaining to the plan which are currently pending or are intended to be submitted to the Service, Department of Labor or the Pension Benefit Guaranty Corporation.

(b) Furnish details of any existing arbitration, litigation, or court procedure which involves the plan.

(c) Also state which Area Office maintains files concerning the plan.

(8) Although it is not required, a digest of certain information from the financial statements described in this section will facilitate the processing of a waiver request. For example, a digest could show for the applicable years:

(a) current assets;

(b) inventory included in current assets;

(c) fixed assets;

(d) other assets;

(e) total assets;

(f) current liabilities;

(g) long-term liabilities;

(h) other liabilities;

(i) total liabilities;

(j) working capital;

(k) equity;

(l) sales;

(m) cost of sales;

(n) gross profit;

(o) other income and expense;

(p) net profit before taxes;

(q) income taxes;

(r) net profit after taxes; and

(s) for plans for which waivers are requested, pension costs expensed in determining (p).

.04 Additional Copy of Information Required.—The applicant must furnish two copies of the necessary waiver information described in section 2.03, if the sum of the outstanding balances of any amortization bases established under § 412(b)(2)(C) of the Code for waivers granted to the plan for any prior plan years (calculated as of

the first day of the plan year for which a new waiver is being requested) when added to the amount for which a waiver is currently being requested, equals or exceeds \$1,000,000.

.05 Checklist.—A checklist has been provided in Appendix B for the convenience of the taxpayer submitting the request. In certain cases some of the material described above may be inappropriate or burdensome to furnish. In such cases, the request for approval should include a statement indicating why such material is not being furnished.

SECTION 3. REQUEST FOR WAIVERS FOR DEFINED CONTRIBUTION PENSION PLANS

.01 Background Information.—Section 3 of Rev. Rul. 78-223, 1978-1 C.B. 125, requires that a defined contribution pension plan contain certain provisions in order for a waiver to be granted. If the applicant does not want to draft individually designed provisions to satisfy the requirements of section 3 of Rev. Rul. 78-223, the Service will provide sample plan amendment language that complies with such requirements. See subsection .02. However, a provision that satisfies section 3 of Rev. Rul. 78-223 does not necessarily satisfy the requirements of § 401(a) of the Code. In order to provide maximum flexibility in obtaining a waiver for a defined contribution pension plan, three alternative procedures are provided in subsections .02, .03, and .04, in which a single request may cover either a waiver ruling only or a waiver ruling and a determination letter as to the status under § 401(a) of the Code.

.02 Waiver Ruling Only/Without Submission of Plan Amendment.—Under this procedure, requests for waivers must be submitted to:

Employee Plans
Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

The applicant must satisfy the requirements of section 2 of this revenue procedure except those applicable only to defined benefit plans, e.g. section 2.03(5)(h).

Any waiver ruling granted under this procedure will be accompanied by a plan amendment supplied by the Service which will, if adopted, satisfy section 3 of Rev. Rul. 78-223. The waiver will be conditioned upon the plan being amended by adoption of that amendment, within a reasonable period of time, and will contain a caveat stating that the ruling is not a ruling as to the effect the plan provision may have on the qualified status of the plan. Upon receipt of that amendment, the applicant may (within 60 days of date of the letter) request reconsideration of this waiver condition if the amendment is inappropriate. Reconsideration may be requested by submitting a letter from the applicant (or authorized representative) to the above address.

.03 Waiver Ruling Only/With Submission of Plan Amendment.—Under this procedure, requests for waivers must be submitted to:

Employee Plans
Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

The applicant must satisfy the requirements of section 2 of this revenue procedure, except those applicable only to defined benefit plans, *e.g.* section 2.03(5)(h), and must include the plan provisions necessary to satisfy section 3 of Rev. Rul. 78-223. All waivers issued pursuant to this subsection will contain a caveat indicating that the ruling is not a ruling as to the effect any plan provision, submitted pursuant to the previous sentence, may have on the qualified status of the plan.

.04 Waiver Ruling and Determination Letter Request.—Under this procedure both the request for a waiver ruling and the request for a determination letter on the effect of any amendment necessary to satisfy section 3 of Rev. Rul. 78-223 must be submitted by the applicant to the Office of the Commissioner, Tax Exempt and Government Entities Division where it will be treated as if it had been submitted as a request for technical advice from the Determinations Manager.

(1) The request that is submitted to the Office of the Commissioner, Tax Exempt and Government Entities Division must include the following:

(a) The combined request must satisfy all the procedural requirements described in section 3.03 of this revenue procedure;

(b) The submission must include a completed Form 5300 and all necessary documents, plan amendments, and information required by the Form 5300 and by this revenue procedure for approval of the plan amendments;

(c) The request must indicate which Area Office has audit jurisdiction over the return; and

(d) The user fee for both the waiver request and the determination letter request must be contained in the submission to the Office of the Commissioner, Tax Exempt and Government Entities Division.

(2) The procedures for notice and comment by interested parties, which are contained in sections 17, 18, and 19, of Rev. Proc. 2004-6, 2004-1 I.R.B. 197, or its successors, as well as the notice and comment procedures provided in section 2.02 of this revenue procedure must be satisfied. Comments are to be forwarded to the Determinations Office that is considering the determination letter request for the plan amendments.

(3) The waiver request will be handled by the Office of the Commissioner, Tax Exempt and Government Entities Division as follows:

(a) The waiver request and supporting documents will be forwarded to the Actuarial Group, SE:T:EP:RA:T:A, which will treat the request as a technical advice on the qualification issue with respect to the plan provisions necessary to satisfy section 3 of Rev. Rul. 78-223.

(b) The appropriate Determinations Office will be notified of the request. In order not to delay the processing of the request, all materials relating to the determination letter request will be sent by the Office of the Commissioner, Tax Exempt

and Government Entities Division to the Determinations Manager for consideration while the technical advice request is completed.

(c) The Office of the Commissioner, Tax Exempt and Government Entities Division will consider both issues. If a waiver is to be granted and if the Office of the Commissioner, Tax Exempt and Government Entities Division believes that qualification of the plan is not adversely affected by the plan amendment, a technical advice memorandum will be issued to the Determinations Manager. The Determinations Manager must decide within 10 working days from the date of the technical advice memorandum either to furnish the applicant with the technical advice memorandum and with a favorable advance determination letter, or to ask for reconsideration of the technical advice memorandum. This request must be in writing. An initial written notice of intent to make this request may be submitted within 10 working days of the date of the technical advice memorandum and followed by a written request within 30 working days from the date of such written notice. If the Determinations Manager does not ask for reconsideration of the technical advice memorandum within 10 working days, the Actuarial Group will issue the waiver ruling. This ruling will not contain the caveat described in section 3.02.

SECTION 4. DEADLINE FOR REQUESTING A WAIVER

All waiver requests (for plans other than multiemployer plans) must be submitted no later than the 15th day of the 3rd month following the close of the plan year for which the waiver is requested. The Service cannot extend this statutory deadline. A request for a waiver with respect to a multiemployer plan generally must be submitted no later than the close of the plan year following the plan year for which the waiver is requested.

In seeking a waiver with respect to a plan year which has not yet ended, the applicant may have difficulty in furnishing sufficient current evidence in support of the request. For this reason it is generally advised that a request not be submitted earlier than 180 days prior to the end

of the plan year for which the waiver is requested.

SECTION 5. GENERAL

Employers who have difficulty in furnishing the information specified in this Revenue Procedure may call the Employee Plans Customer Assistance Service at 1-877-829-5500 (a toll-free number), or write for guidance at the following address:

Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA:T:A
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Additional information sent after the initial request should be sent to the Actuarial Group. In appropriate instances, preliminary conferences may be afforded in addition to conferences available under Rev. Proc. 2004-4, 2004-1 I.R.B. 125.

SECTION 6. BANKRUPTCY PETITIONS

If the applicant or a significant number of controlled group members file a bankruptcy petition after the request for a waiver of the minimum funding standard is submitted to the Service, the applicant must provide to the Service an update to the information required to be submitted in section 2 of this revenue procedure, especially the financial information in section 2.03(4).

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for all ruling requests received after February

17, 2004, the date of its publication in the Internal Revenue Bulletin.

SECTION 8. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2004-4 is modified to the extent that this revenue procedure provides special procedures for issuing rulings with respect to requests for waivers of the minimum funding standard.

Rev. Proc. 2004-5 is modified to the extent that this revenue procedure provides special procedures for furnishing technical advice to Determinations managers when both a request for a waiver of the minimum funding standard and a request for a determination letter have been submitted for a defined contribution plan.

Rev. Proc. 2004-6 is modified to the extent that this revenue procedure provides special procedures to follow in issuing a determination letter for a defined contribution plan if a waiver of the minimum funding standard has been requested.

Rev. Proc. 94-41, 1994-1 C.B. 711, is superseded

SECTION 9. 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 1545-1873.

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 control number.

The collection of information in this revenue procedure is in sections 2 and 3. This information is required to evaluate and process the request for a change in funding method. The collection of information is required to obtain approval for a change in funding method. The likely respondents are businesses or other for-profit institutions, nonprofit institutions, and small businesses and organizations.

The estimated total annual reporting burden is 4,730 hours.

The estimated annual burden per respondent varies from 75 to 100 hours, depending on individual circumstances, with an estimated average burden of 86 hours. The estimated number of respondents and/or recordkeepers is 55.

The estimated annual frequency of responses is one.

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.

DRAFTING INFORMATION

The principal author of this revenue procedure is John C. Heil of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding how this revenue procedure applies to employee plans matters, contact the Employee Plans Customer Assistance Service at 1-877-829-5500 (a toll-free call). Mr. Heil's telephone number is (202) 283-9694 (not a toll-free call).

APPENDIX A

**MODEL NOTICE OF FUNDING WAIVER APPLICATION
TO EMPLOYEE ORGANIZATIONS (UNIONS),
PARTICIPANTS, BENEFICIARIES, AND ALTERNATE PAYEES**

This notice is to inform you that an application for a waiver of the minimum funding standard under § 412(d) of the Internal Revenue Code (Code) and section 303 of the Employee Retirement Income Security Act of 1974 (ERISA) has been submitted by [INSERT PLAN SPONSOR'S NAME] to the Internal Revenue Service (Service) for the [INSERT PLAN NAME] for the plan year beginning [INSERT DATE].

Under § 412(f)(4)(B) of the Code and section 303(e)(2) of ERISA, the Service will consider any relevant information submitted concerning this application for a waiver of the minimum funding standard. You may send this information to the following address:

Director, Employee Plans
Internal Revenue Service
Attention: SE:T:EP:RA:T:A
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Any such information should be submitted as soon as possible after you have received this notice. Due to the disclosure restrictions of § 6103 of the Code, the Service can not provide any information with respect to the waiver request itself.

In accordance with section 104 of ERISA and § 2520.104b-10 of the Department of Labor Regulations (29 C.F.R. Part 2520), annual financial reports for this plan, which include employer contributions made to the plan and the accumulated funding deficiency for the plan for any plan year, are available for inspection at the Department of Labor in Washington, D.C. Copies of such reports may be obtained upon request and upon payment of copying costs from the following address:

Public Disclosure Room
Room N-5507
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

As required by section 104(b)(2) of ERISA, copies of the latest annual plan report are available for inspection at the principal office of the plan administrator, who is located at [INSERT ADDRESS]. Copies of the annual report may be obtained upon request and upon payment of a copying charge of [INSERT CHARGE] by writing to the plan administrator at the above address.

The following information is provided pursuant to § 412(f)(4)(A) of the Code and section 303(e)(1) of ERISA:

Present Value of Vested Benefits \$_____

Present Value of Benefits, calculated as though the plan terminated \$_____

Fair Market Value of Plan Assets \$_____

The above present values were calculated using an interest rate of [INSERT INTEREST RATE].

[SIGNATURE OF APPROPRIATE OFFICER OF THE PLAN SPONSOR]

[INSERT NAME]

[INSERT TITLE]

APPENDIX B
WAIVER OF MINIMUM FUNDING STANDARD REQUEST CHECKLIST
IS YOUR SUBMISSION COMPLETE?

INSTRUCTIONS

The Service will be able to respond more quickly to your waiver of minimum funding standard request if it is carefully prepared and complete. To ensure your request is in order, use this checklist. Answer each question in the checklist by inserting Y for yes, N for no, or N/A for not applicable, as appropriate, in the blank next to the item. *Sign and date the checklist (as taxpayer or authorized representative) and place it on top of your request.*

You must submit a completed copy of this checklist with your request. If a completed checklist is not submitted with your request, substantive consideration of your submission will be deferred until a completed checklist is received.

- _____ 1. If you want to designate an authorized representative, have you included a properly executed Form 2848 (*Power of Attorney and Declaration of Representative*)?
- _____ 2. Have you satisfied all the requirements of Rev. Proc. 2003-4 or its successors (especially concerning signatures and penalties of perjury statement)? (See section 2.02(1) & (2))
- _____ 3. Have you included statement of proposed deletions? (See §2.02(3))
- _____ 4. Have you included the user fee required under Rev. Proc. 2003-8 or its successors? (See section 2.01 & 2.02(3))
- _____ 5. Have you included a copy of the written notification that an application for a waiver has been submitted and a statement that such notice was delivered to each employee organization, participant, beneficiary and alternate payee? (See section 2.02(4) and Appendix A)
- _____ 6. Have you included the general facts concerning the employer? (See section 2.03(1))
- _____ 7. Have you included a description of the employer's financial condition? (See section 2.03(2)).
- _____ 8. If the plan is not a multiemployer plan, have you included a description of the employer's executive compensation arrangements? (See section 2.03(3))
- _____ 9. Have you included an explanation of the nature and extent of the business hardship, including financial projections if the waiver request exceeds \$1,000,000 and the plan is not a multiemployer plan? (See section 2.03(4))
- _____ 10. Have you included information concerning the pension plan? (See section 2.03(5))
- _____ 11. Have you included information concerning other pension, profit-sharing, or stock bonus plans of the employer? (See section 2.03(6))
- _____ 12. Have you included information concerning other matters pertaining to the plan? (See section 2.03(7))

13. Have you provided a digest of financial information? (See section 2.03(8))

14. Have you provided 2 copies of the necessary waiver information described in section 2.03 if the waiver request exceeds \$1,000,000? (See section 2.04)

15. If the waiver request pertains to a defined contribution pension plan, have you provided a copy of the plan amendment or determination letter request, if applicable? (See section 3.01–3.04)

16. Have you submitted the request for a waiver no later than the 15th day of the 3rd month following the close of the plan year if the plan is not a multiemployer plan, or no later than the close of the plan year following the plan year for which the waiver is requested if the plan is a multiemployer plan? (See section 4)

Signature

Date

Title or Authority

Typed or printed name of person signing checklist

Part IV. Items of General Interest

Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries — Suspensions, Censures, Disbarments, and Resignations

Announcement 2004-6

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another

person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility will announce in the Internal Revenue Bulletin

their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

Disbarments From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an oppor-

tunity for a proceeding before an administrative law judge, the following individu-

als have been disbarred from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Baxley II, Milton	Gainesville, FL	CPA	October 24, 2003

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice be-

fore the Internal Revenue Service, may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled ac-

tuary in accordance with the consent offered.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Nietupski, John E.	Springfield, MA	Enrolled Agent	Indefinite from October 15, 2005
Roberts, Dennis C.	Oklahoma City, OK	Attorney	Indefinite from October 27, 2003

Name	Address	Designation	Date of Suspension
Waldo-Grant, Barbara A.	Grand Rapids, MI	Enrolled Agent	Indefinite from November 1, 2003
Naylor, Dale C.	El Cajon, CA	Enrolled Agent	Indefinite from November 12, 2003
Schlude, Richard M.	Wilkes Barre, PA	Enrolled Agent	Indefinite from November 19, 2003
Stern, Samuel L.	Robbinsdale, MN	Attorney	Indefinite from November 19, 2003
Robles, Michael	Dallas, TX	CPA	Indefinite from December 1, 2003
Young Jr., Donald A.	Redondo Beach, CA	Enrolled Agent	December 1, 2003 to August 31, 2004
Hitchcock, William C.	Irvine, CA	Enrolled Agent	Indefinite from December 30, 2003
Willms, Bryant E.	Lee Summit, MO	Enrolled Agent	January 1, 2004 to December 31, 2004

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date

the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions:

Name	Address	Designation	Date of Suspension
Greene, Marvin	Chicago, IL	CPA	Indefinite from October 21, 2003
Bolusky, Eric B.	Perkins, OK	Attorney	Indefinite from October 21, 2003
Crutchfield Jr., Ernest	Latty, OH	Enrolled Agent	Indefinite from October 21, 2003

Name	Address	Designation	Date of Suspension
Covey, Charles	Gladstone, MO	CPA	Indefinite from October 23, 2003
Prosperi, Arnold P.	Jupiter Island, FL	Attorney	Indefinite from November 24, 2003
Lucas, Christopher	Overland Park, KS	Attorney	Indefinite from November 24, 2003
Ramsey, Henry A.	Burnet, TX	CPA	Indefinite from December 15, 2003

Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the In-

ternal Revenue Service, may offer his or her resignation as an enrolled agent. The Director, Office of Professional Responsibility, in his discretion, may accept the offered resignation.

The Director, Office of Professional Responsibility, has accepted offers of resignation as an enrolled agent from the following individuals:

Name	Address	Date of Resignation
Pettyplace, Edward F.	Sacramento, CA	January 30, 2004

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions; Correction

Announcement 2004-10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document corrects final and temporary regulations (T.D. 9048, 2003-1 C.B. 644 [68 FR 12287]) published in the **Federal Register** on March 14, 2003. The final and temporary regulations redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock and certain deconsolidations of a subsidiary member and also suspend certain losses recognized on the disposition of stock of a subsidiary member.

DATES: This document is effective on March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Aimee K. Meacham, (202) 622-7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (T.D. 9048) that are the subject of these corrections are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (T.D. 9048) contain errors that may prove to be misleading and are in need of clarification. In particular, this document supplies text clarifying § 1.1502-35T(c)(5)(i).

Correction of Publication

Accordingly, the publication of the final and temporary regulations (T.D. 9048) that were the subject of FR. Doc. 03-6119, is corrected as follows:

§ 1.1502-35T [Corrected]

1. On page 12294, column 1, § 1.1502-35T(c)(5)(i), line 8 from the bottom of the paragraph, the language “subsidiary (or any successor) is not a” is corrected to read “subsidiary (and any successor) is not a”.

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

(Filed by the Office of the Federal Register on January 12, 2004, 8:45 a.m., and published in the issue of the Federal Register for January 13, 2004, 69 F.R. 1918)

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.

Numerical Finding List¹

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2003–27 through 2003–52 is in Internal Revenue Bulletin 2003–52, dated December 29, 2003.

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¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2003–27 through 2003–52 is in Internal Revenue Bulletin 2003–52, dated December 29, 2003.