processes does not preclude classification in the asset class that specifically applies to the conversion of biomass to fuel.

Further, Taxpayer is primarily engaged in producing fuel grade ethanol (liquid fuel) from corn (biomass) at this facility. Under the "primary use" test of § 1.167(a)–11(b)(4)(iii)(*b*), Taxpayer's activity is described in asset class 49.5.

HOLDING

The proper asset class under Rev. Proc. 87–56 for depreciation of tangible assets used in converting corn to fuel grade ethanol is asset class 49.5 (other than § 1250 property not described in asset class 49.5 and assets classified in asset classes 00.11 through 00.4 of Rev. Proc. 87–56).

PROSPECTIVE APPLICATION

Pursuant to § 7805(b)(8), the Internal Revenue Service will not apply the holding in this revenue ruling to tangible assets that are used in converting biomass to a liquid fuel such as fuel grade ethanol that a taxpayer places in service before [INSERT PUBLICATION DATE OF FINAL REVENUE RULING].

DRAFTING INFORMATION

The principal author of this notice is Ruba Nasrallah of the Office of the Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Ms. Nasrallah at (202) 622–4930 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, § 108.)

Rev. Proc. 2009–37

SECTION 1. PURPOSE

.01 This revenue procedure provides the exclusive procedures for taxpayers to make an election to defer recognizing discharge of indebtedness income ("COD income") under § 108(i) of the Internal Revenue Code.

.02 This revenue procedure also requires taxpayers making the § 108(i) election to provide additional information on returns beginning with the taxable year following the taxable year for which the taxpayer makes the election. This revenue procedure describes the time and manner of providing this additional information.

.03 The Internal Revenue Service and Treasury Department intend to issue additional guidance under § 108(i) that may include regulations addressing matters in this revenue procedure. Taxpayers should be aware that these regulations may be retroactive. See § 7805(b)(2). This revenue procedure may be modified to provide procedures consistent with additional guidance.

SECTION 2. BACKGROUND

.01 *Section 108(i), Generally.* Section 108(i) was added to the Code by § 1231 of the American Recovery and Reinvestment Tax Act of 2009, Pub. L. No. 111–5, 123 Stat. 338. In general, § 108(i) provides that, at the election of a taxpayer, COD income realized in connection with a reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument is includible in gross income ratably over a 5-taxable-year inclusion period, beginning with the taxpayer's fourth or fifth taxable year following the taxable year of the reacquisition. Generally, if a taxpayer makes a § 108(i) election and reacquires (or is treated as reacquiring) the applicable debt instrument generating the COD income for a new debt instrument with original issue discount ("OID"), then interest deductions for this OID also are deferred, as provided in § 108(i)(2). The OID deferral rule, however, does not apply if the amount of OID is less than a *de minimis* amount, as determined under § 1273(a)(3) and § 1.1273–1(d) of the Income Tax Regulations. The OID deferral rule in § 108(i)(2) applies at the entity level for a pass-through entity. For example, a partnership (and therefore its partners) may not deduct currently the OID described in § 108(i)(2)(A)(i). A taxpayer must take into account any item of income or deduction deferred under § 108(i), and not previously taken into account, in the taxable year in which certain events occur (such as the liquidation of the taxpayer and upon other events specified in administrative guidance). See § 108(i)(5)(D). The rule regarding acceleration of deferred COD income and OID deductions also applies in the case of certain dispositions by persons holding ownership interests in pass-through entities. Section 108(i)(5)(D)(ii). For purposes of § 108(i), regulated investment companies (as defined in § 851(a)) and real estate investment trusts (as defined in § 856(a)) are not pass-through entities.

.02 *Applicable Debt Instrument.* Section 108(i)(3)(A) defines the term "applicable debt instrument" to mean any debt instrument issued by a C corporation or by any other person in connection with the conduct of a trade or business by that person. The term "debt instrument" means any bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness within the meaning of § 1275(a)(1). Section 108(i)(3)(B). For purposes of § 108(i), in the case of an intercompany obligation (as defined in § 1.1502–13(g)(2)(ii)), an applicable debt instrument includes only an instrument for which COD income is realized upon the instrument's deemed satisfaction under § 1.1502–13(g)(5).

.03 *Reacquisition.* Section 108(i)(4)(A) defines the term "reacquisition" to mean, with respect to any applicable debt instrument, any acquisition of the debt instrument by the debtor that issued (or is otherwise the obligor under) the debt instrument, or a person related to the debtor under § 108(e)(4). The term "acquisition" includes an acquisition of the debt instrument for cash or other property, the exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, the contribution of the debt instrument to capital, and the complete forgiveness of the indebtedness by the holder of the debt instrument. See § 108(i)(4)(B). The term "acquisition" also includes an indirect acquisition within the meaning of § 1.108–2(c) if a direct acquisition of the debt instrument would qualify for an election under § 108(i). For example, if a corporation acquires debt of a partnership that the partnership issued in connection with its trade or business, and the partnership and corporation become related within six months of the corporation's acquisition of the debt, the indirect

acquisition is an acquisition for which an election under § 108(i) may be made.

.04 *General Requirements for the Section 108(i) Election.* Section 108(i)(5)(B) provides, in general, that a taxpayer makes the § 108(i) election by including a statement that clearly identifies the applicable debt instrument with the return of tax imposed for the taxable year in which the reacquisition of the instrument occurs. (For purposes of this revenue procedure, a return of tax or income tax return includes an information return, and a taxpayer includes a person that files an information return.) The statement must include the amount of income to which § 108(i)(1) applies and other information the Service may prescribe. Once made, a § 108(i) election is irrevocable and, except as provided in section 7 of this revenue procedure, may not be modified.

.05 *Section 108(i) Elections Made by Pass-through Entities.* In the case of COD income realized by a pass-through entity from the reacquisition of an applicable debt instrument, the pass-through entity makes the § 108(i) election. Section 108(i)(5)(B)(iii).

.06 *Additional Information on Subsequent Years' Returns.* Section 108(i)(7) authorizes the Service to issue guidance necessary or appropriate for applying § 108(i), including requiring reporting the election and other information on returns of tax for subsequent taxable years.

.07 *Exclusivity.* Section 108(i)(5)(C) provides that if a taxpayer elects to apply § 108(i) to an applicable debt instrument, § 108(a)(1)(A), (B), (C), and (D) do not apply to COD income deferred under § 108(i).

.08 *Allocation of Deferred COD Income on Partnership Indebtedness.* Section 4.04(3) of this revenue procedure describes how a partnership may elect under § 108(i) to defer a portion of the COD income realized from the reacquisition of an applicable debt instrument. If a partnership elects to defer all or any portion of COD income realized from the reacquisition of an applicable debt instrument, all of the COD income with respect to that debt instrument, without regard to § 108(i), is allocated to the partners in the partnership immediately before the reacquisition in the manner in which the income would be included in the distributive shares of these partners under § 704 and the regulations thereunder, including § 1.704–1(b)(2)(iii). Each partner's share of this COD income is the partner's COD income amount ("COD income amount"). The partner's COD income amount that is deferred under § 108(i) is the partner's deferred amount ("deferred amount"). The partner's COD income amount that is not deferred and is included in the partner's distributive share of partnership income for the taxable year of the partnership in which the reacquisition occurs is the partner's included amount ("included amount").

.09 *Partner's Deferred § 752 Amount.* A decrease in a partner's share of a partnership liability resulting from the reacquisition of an applicable debt instrument that is not treated as a current distribution of money to the partner under § 752 by reason of § 108(i)(6) is the partner's deferred § 752 amount ("deferred § 752 amount"). A partner's deferred § 752 amount may not exceed the lesser of (i) the partner's deferred amount or (ii) gain that the partner would recognize in the year of reacquisition under § 731 as a result of the reacquisition absent § 108(i)(6). To determine the amount of gain the partner would recognize under clause (ii) of the preceding sentence, the amount of any deemed distribution of money under § 752(b) resulting from the decrease in the partner's share of a reacquired applicable debt instrument that is treated as an advance or draw of money under § 1.731–1(a)(1)(ii) is determined as if no COD income resulting from the reacquisition of the applicable debt instrument is deferred under § 108(i). See Rev. Rul. 92–97, 1992–2 C.B. 124, and Rev. Rul. 94–4, 1994–1 C.B. 195. A partner's deferred § 752 amount is treated as a distribution of money to the partner under § 752 at the same time, and to the extent remaining in the same amount, as the partner recognizes the COD income deferred under § 108(i).

.10 *Allocation of Deferred COD Income on S Corporation Indebtedness.* For purposes of § 108(i), an S corporation's COD income deferred under § 108(i) is shared *pro rata* only among those shareholders that are shareholders of the S corporation immediately before the reacquisition transaction.

.11 *Deferred COD Income, Earnings and Profits, and Alternative Minimum Taxable Income.*

(1) *In general.* The Service and Treasury Department intend to issue regulations regarding the computation of a corporation's earnings and profits with respect to COD income and OID deductions that are deferred under § 108(i). These regulations generally will provide that deferred COD income increases earnings and profits in the taxable year that it is realized and not in the taxable year or years that the deferred COD income is includible in gross income. OID deductions deferred under § 108(i) generally will decrease earnings and profits in the taxable year or years in which the deduction would be allowed without regard to § 108(i). COD income and OID deductions that are deferred increase or decrease adjusted current earnings under § 56(g)(4) in the taxable year or years that the income or deduction is includible or deductible in determining taxable income. See § 1.56(g)–1(c)(1).

(2) *Exceptions for certain special status corporations.* The Service and Treasury Department intend to issue regulations providing that in the case of regulated investment companies and real estate investment trusts, COD income deferred under § 108(i) generally increases earnings and profits in the taxable year or years in which the deferred COD income is includible in gross income and not in the year that the deferred COD income is realized. OID deductions deferred under § 108(i) generally decrease earnings and profits in the taxable year or years that the deferred OID deductions are deductible.

.12 *Extension of Time to Make Election.* Under § 301.9100–1 of the Procedure and Administration Regulations, the Service may grant an extension of time to make a regulatory election. An election is a regulatory election if the due date is prescribed by regulation or other published guidance of general applicability. Section 301.9100–2(a) provides an automatic 12-month extension from the due date for making certain regulatory elections.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that realize COD income from a reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in § 108(i).

SECTION 4. ELECTION PROCEDURES

.01 *In General.*

(1) A taxpayer within the scope of this revenue procedure makes the § 108(i) election by—

(a) Attaching a statement meeting the requirements of section 4.05 of this revenue procedure to the taxpayer's timely filed (including extensions) original federal income tax return for the taxable year in which the reacquisition of the applicable debt instrument occurs, and

(b) If applicable, satisfying the additional requirements of section 4.07, 4.08, 4.09, or 4.10 of this revenue procedure.

(2) The Service grants an automatic extension of 12 months from the due date prescribed in section 4.01(1)(a) of this revenue procedure for making the § 108(i) election. The rules that apply to an automatic extension under § 301.9100–2(a) apply to this automatic extension.

.02 *Section 108(i) Elections Made by Members of Consolidated Groups*. The common parent of a consolidated group makes the § 108(i) election on behalf of all members of the group. See § 1.1502–77(a).

.03 *Aggregation Rule*. A taxpayer within the scope of this revenue procedure may treat two or more applicable debt instruments that are part of the same issue and that are reacquired during the same taxable year as one applicable debt instrument for purposes of this revenue procedure. A pass-through entity may not treat two or more applicable debt instruments as one applicable debt instrument under this section 4.03 if the owners and their ownership interests in the pass-through entity immediately prior to the reacquisition of each applicable debt instrument are not identical.

.04 *Partial Elections*.

(1) A taxpayer within the scope of this revenue procedure may make an election for any portion of COD income realized from the reacquisition of any applicable debt instrument. Thus, for example, if a taxpayer realizes $100 of COD income from the reacquisition of an applicable debt instrument, the taxpayer may elect under § 108(i)(1) to defer only $40 of the $100 of COD income. The taxpayer may exclude from income the portion of COD income that the taxpayer does not elect to defer under § 108(i) ($60 in this example) under § 108(a)(1)(A), (B), (C), or (D), if applicable.

(2) A taxpayer is not required to make an election for the same portion of COD income arising from each applicable debt instrument that it reacquires, but may make an election for different portions of COD income arising from different applicable debt instruments (whether or not part of the same issue). Thus, for example, if a taxpayer realizes $100 of COD income from the reacquisition of an applicable debt instrument (Instrument A) and $100 of COD income from the reacquisition of a different applicable debt instrument (Instrument B), the taxpayer may elect to defer all or a portion of the COD income associated with Instrument A and none or a different portion of the COD income associated with Instrument B.

(3) A partnership that elects to defer less than all of the COD income realized from the reacquisition of an applicable debt instrument may determine, in any manner, the portion, if any, of a partner's COD income amount that is the partner's deferred amount and the portion, if any, of a partner's COD income amount that is the partner's included amount. Thus, for example, one partner's deferred amount may be zero while another partner's deferred amount may equal that partner's COD income amount (or any portion thereof). A partner may exclude from income the partner's included amount under § 108(a)(1)(A), (B), (C), or (D), if applicable. The provisions of this section 4.04(3) apply for purposes of § 108(i) only and are not intended as an interpretation of or a change to existing law under § 704.

.05 *Contents of Election Statement*. A statement meets the requirements of this section 4.05 if the statement—

(1) *Label*. States "Section 108(i) Election" across the top.

(2) *Required information*. Provides, for each applicable debt instrument the reacquisition of which generates COD income that the taxpayer is electing to defer under § 108(i)—

(a) The name and taxpayer identification numbers, if any, of the issuer or issuers of the applicable debt instrument;

(b) A general description of the applicable debt instrument (including the issue and maturity dates) and, in the case of any person other than a C corporation, a general description of the person's trade or business to which the applicable debt instrument is connected;

(c) A general description of the reacquisition transaction or transactions generating the COD income (including the date(s) of the transaction(s));

(d) The total amount of COD income for the applicable debt instrument that results from the reacquisition (in the case of a partnership, the aggregate of the partners' COD income amounts) and a general description of the manner in which this amount is calculated;

(e) The amount of COD income for the applicable debt instrument that the taxpayer is electing to defer under § 108(i);

(f) In the case of a partnership, a list of partners that have a deferred amount, their identifying information and each partner's deferred amount; and in the case of an S corporation, a list of shareholders with COD income deferred under § 108(i), their identifying information and each shareholder's share of the S corporation's deferred COD income; and

(g) In cases in which a new debt instrument is issued or deemed issued in exchange for the applicable debt instrument (including exchanges under § 108(e)(4), § 108(i)(2)(B), and § 1.1001–3), the issuer's name, the issuer's taxpayer identification number, if any, a general description of the new debt instrument and whether the new debt instrument has OID, and if the new debt instrument has OID, a schedule of the OID that the issuer expects to accrue each taxable year on the instrument and the amount of OID that the issuer expects to defer under § 108(i)(2) each taxable year.

.06 *Supplemental information*. The statement described in section 4.05 of this revenue procedure may specify for each applicable debt instrument an amount greater than the amount identified in section 4.05(2)(e) of this revenue procedure that the taxpayer elects to defer under § 108(i) in the event the Service subsequently concludes that the taxpayer understated the amount of COD income described in section 4.05(2)(d) of this revenue procedure. This additional amount of COD income the taxpayer elects to defer may be described as the entire additional COD income, or as a percentage of any additional COD income. If the taxpayer is a partnership, the partnership must specify each partner's share of the partnership's

additional COD income that would be deferred (the partner's additional deferred amount), which the partnership may describe for each partner as the partner's entire share of the partnership's additional COD income or as a percentage of the partner's share of the partnership's additional COD income. If the taxpayer is an S corporation, the S corporation must specify each shareholder's share of the S corporation's additional COD income that would be deferred, which the S corporation may describe for each shareholder as the shareholder's entire share of the S corporation's additional COD income or as a percentage of the shareholder's share of the S corporation's additional COD income. In the case of partnerships and S corporations, the additional COD income and the portion of additional COD income that would be deferred are allocated or determined as provided in sections 2.08, 2.10 and, if applicable, 4.04(3) of this revenue procedure, respectively, as if the additional COD income was realized.

.07 *Additional Requirements for Certain Partnerships Making a § 108(i) Election*. The rules of this section 4.07 apply to partnerships other than partnerships described in section 4.10 of this revenue procedure.

(1) *Information filing on Schedule K–1 (Form 1065 and Form 1065–B)*. For the taxable year in which the § 108(i) election is made, the partnership must report on the Schedule K–1 (Form 1065 or Form 1065–B), *Partner's Share of Income, Deductions, Credits, etc.*, in the manner specified in the instructions to the forms, for each partner § 108(i) information on an aggregate basis for all applicable debt instruments for which a § 108(i) election is made. Partnerships reporting § 108(i) information on the 2008 Schedule K–1 (Form 1065 or Form 1065–B) must report for each partner on an aggregate basis for all applicable debt instruments for which a § 108(i) election is made:

(a) The partner's deferred amount that the partner must include in income in the current taxable year under § 108(i)(1) or § 108(i)(5)(D)(i) or (ii), in box 11 ("other income") using code F for Schedule K–1 (Form 1065) or in box 9 ("other") using code U for Schedule K–1 (Form 1065–B);

(b) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(2)(A)(ii) or § 108(i)(5)(D)(i) or (ii), in box 13 ("other deductions") using code W for Schedule K–1 (Form 1065) or in box 9 ("other") using code U for Schedule K–1 (Form 1065–B);

(c) The partner's deferred amount that has not been included in income in the current or prior taxable years, in box 20 ("other information") using code X for Schedule K–1 (Form 1065) or in box 9 ("other") using code U for Schedule K–1 (Form 1065–B);

(d) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) that has not been deducted in the current or prior taxable years, in box 20 ("other information") using code X for Schedule K–1 (Form 1065) or in box 9 ("other") using code U for Schedule K–1 (Form 1065–B);

(e) The partner's deferred § 752 amount that is treated as a distribution of money to the partner under § 752 in the current taxable year, in box 20 ("other information") using code X for Schedule K–1 (Form 1065) or in box 9 ("other") using code U for Schedule K–1 (Form 1065–B); and

(f) The partner's deferred § 752 amount remaining as of the end of the current taxable year, in box 20 ("other information") using code X for Schedule K–1 (Form 1065) or in box 9 ("other") using code U for Schedule K–1 (Form 1065–B).

(2) *Election information statement provided to partners.* The partnership must attach to the Schedule K–1 (Form 1065 or Form 1065–B) provided to each partner for the taxable year in which the § 108(i) election is made a statement satisfying the requirements of this section 4.07(2). The partnership should not attach these statements to the Schedules K–1 that are filed with the Service, but must retain these statements, and each partner must retain that partner's statement, in their respective books and records. A statement meets the requirements of this section 4.07(2) if the statement—

(a) *Label*. States "Section 108(i) Election Information Statement for Partners" across the top.

(b) *Required information*. Clearly identifies for each applicable debt instrument to which an election under § 108(i) applies—

(i) The partner's COD income amount, the partner's deferred amount, and the partner's included amount;

(ii) The partner's deferred amount that the partner must include in income in the current taxable year under § 108(i)(5)(D)(i) or (ii);

(iii) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) in the current taxable year;

(iv) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(5)(D)(i) or (ii);

(v) The partner's share of each liability of the partnership described in section 4.05(2)(g) of this revenue procedure;

(vi) The partner's share of the decrease in the partnership liability that results from the reacquisition of the applicable debt instrument;

(vii) The partner's share of the decrease in the partnership liability that results from the reacquisition of the applicable debt instrument that is treated as a distribution of money to the partner under § 752 in the current taxable year;

(viii) The partner's deferred § 752 amount as described in section 2.09 of this revenue procedure;

(ix) The partner's additional deferred amount as described in section 4.06 of this revenue procedure; and

(x) The date of the reacquisition transaction generating the COD income.

(c) If a partner fails to provide the written statement required by section 4.07(3) of this revenue procedure, the partnership must indicate that the amounts described in section 4.07(2)(b)(vii) and (viii) of this revenue procedure cannot be calculated because the partner did not provide the information necessary to report these amounts.

(3) *Partner reporting requirements*. The partnership must make reasonable efforts prior to making a § 108(i) election to secure from each partner with a deferred amount for which it does not have the information necessary to compute the partner's basis in its partnership interest (and its deferred § 752 amount as described in section 2.09 of this revenue procedure) a written statement signed under penalties of perjury that includes this information. Each partner with a deferred

amount must provide this written statement to the partnership within 30 days of the date of request by the partnership. A partner's failure to comply with this reporting requirement does not invalidate the partnership's election under § 108(i) for an applicable debt instrument only if the partnership makes reasonable efforts before making the § 108(i) election to obtain the written statement from the partner and otherwise complies with the requirements of section 4 of this revenue procedure. If a partner provides its written statement under this section 4.07(3) after the partnership has provided to the partner the Section 108(i) Election Information Statement for Partners, the partnership must provide to the partner a revised Section 108(i) Election Information Statement for Partners reporting the information required under section 4.07(2)(b)(vii) and (viii) of this revenue procedure and report the partner's deferred § 752 amount on the partner's Schedule K–1 (Form 1065 or Form 1065–B) in subsequent taxable years.

.08 *Additional Requirements for an S Corporation Making a § 108(i) Election*.

(1) *Information filing on Schedule K–1 (Form 1120S)*. For the taxable year in which the § 108(i) election is made, the S corporation must report on the Schedule K–1 (Form 1120S), *Shareholder's Share of Income, Deductions, Credits, etc.*, in the manner specified in the instructions to the forms, for each shareholder § 108(i) information on an aggregate basis for all applicable debt instruments for which a § 108(i) election is made. S corporations reporting § 108(i) information on the 2008 Schedule K–1 (Form 1120S) must report for each shareholder, on an aggregate basis for all applicable debt instruments for which a § 108(i) election is made, the shareholder's share of the S corporation's:

(a) COD income deferred under § 108(i) that the shareholder must include in income in the current taxable year under § 108(i)(1) or § 108(i)(5)(D)(i) or (ii), in box 10 ("other income") using code E;

(b) OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(2)(A)(ii), or § 108(i)(5)(D)(i) or (ii), in box 12 ("other deductions") using code S;

(c) COD income deferred under § 108(i) that has not been included in income in the current or prior taxable years, in box 17 ("other information") using code T; and

(d) OID deduction deferred under § 108(i)(2)(A)(i) that has not been deducted in the current or prior taxable years, in box 17 ("other information") using code T.

(2) *Election information statement provided to shareholders.* The S corporation must attach to the Schedule K–1 (Form 1120S) provided to each shareholder for the taxable year in which the § 108(i) election is made, a statement satisfying the requirements of this section 4.08(2). The S corporation should not attach these statements to the Schedules K–1 that are filed with the Service, but must retain these statements, and each shareholder must retain that shareholder's statement, in their respective books and records. A statement meets the requirements of this section 4.08(2) if the statement—

(a) *Label*. States "Section 108(i) Election Information Statement for Shareholders" across the top.

(b) *Required information*. Clearly identifies for each applicable debt instrument to which an election under § 108(i) applies, the shareholder's share of the S corporation's—

(i) COD income that the S corporation elects to defer under § 108(i);

(ii) COD income deferred under § 108(i) that the shareholder must include in income in the current taxable year under § 108(i)(5)(D)(i) or (ii);

(iii) OID deduction deferred under § 108(i)(2)(A)(i) in the current taxable year;

(iv) OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(5)(D)(i) or (ii); and

(v) Additional COD income that would be deferred as described in section 4.06 of this revenue procedure.

.09 *Section 108(i) Elections Made on Behalf of Certain Foreign Corporations.* The controlling domestic shareholder(s) (or common parent of the controlling domestic shareholder(s), if applicable) of a controlled foreign corporation or a noncontrolled § 902 corporation not otherwise required to file a return of tax may make the § 108(i) election on behalf of the foreign corporation by satisfying the requirements of § 1.964–1(c)(3). Each controlling domestic shareholder must attach a statement identifying the foreign corporation and satisfying the requirements of section 4.05 of this revenue procedure and, if applicable, section 4.06 of this revenue procedure, to its federal income tax return for the taxable year ending within or with the taxable year of the foreign corporation for which the § 108(i) election is made.

.10 *Section 108(i) Elections Made By Certain Foreign Partnerships.* The rules of this section 4.10 apply to a foreign partnership making a § 108(i) election that is not otherwise required to file a federal partnership return ("nonfiling foreign partnership"). See § 1.6031(a)–1(b).

(1) A nonfiling foreign partnership making the election must attach a statement satisfying the requirements of section 4.05 of this revenue procedure and, if applicable, section 4.06 of this revenue procedure, to a partnership return satisfying the requirements of § 1.6031(a)–1(b)(5) it files with the Service. In addition, a nonfiling foreign partnership must include in the information required in section 4.05(2)(d) and (e) of this revenue procedure the aggregate amounts for all partners as well as the aggregate amounts for all U.S. persons (as defined in § 7701(a)(30)) and controlled foreign corporation(s) that are partners with deferred amounts in the nonfiling foreign partnership ("affected partners").

(2) The nonfiling foreign partnership must make the election, in accordance with § 1.6031(a)–1(b)(5), by the date provided in section 4.01(1)(a) of this revenue procedure, as if it had a filing obligation for the taxable year in which the reacquisition of the applicable debt instrument occurs.

(3) For each affected partner, the partnership must file with the Service a Schedule K–1 (Form 1065) and report on the Schedule K–1 (Form 1065) for the affected partner as provided in section 4.07(1) of this revenue procedure. Except for this § 108(i) information, the partnership need not complete Part III of the Schedule K–1 (Form 1065). The partnership must provide a copy of the respective Schedule K–1 (Form 1065) to each affected partner and must also attach to the Schedule K–1 (Form 1065) provided to each affected partner a statement satisfying the requirements of section 4.07(2) of this revenue procedure by the date provided in section 4.01(1)(a) of this revenue proce-

dure. The partnership should not attach any statement described in section 4.07(2) of this revenue procedure to the Schedules K–1 that are filed with the Service. However, the partnership must retain the statements provided to the affected partners, and each affected partner must retain that partner's statement, in their respective books and records.

(4) The partnership and each affected partner must satisfy the requirements of section 4.07(3) of this revenue procedure.

.11 *Protective § 108(i) Election.*

(1) *In general*. A taxpayer may make a protective election under § 108(i) for an applicable debt instrument if the taxpayer concludes that a particular transaction does not result in the realization of COD income, reports the transaction on its federal income tax return in a manner consistent with the taxpayer's conclusion, and would be within the scope of this revenue procedure if the taxpayer's conclusion were incorrect. If the Service at any time determines the taxpayer's conclusion that the particular transaction does not result in the realization of COD income is incorrect, the taxpayer's protective election is treated as a valid, irrevocable election under § 108(i). Thus, if a taxpayer makes a protective election, the Service subsequently may require the taxpayer to report COD income deferred pursuant to the valid and irrevocable protective election even if the statute of limitations has expired for the year in which the COD income was realized and the protective election was made. A taxpayer makes a protective election by attaching a statement satisfying the requirements of this section 4.11(1) to the taxpayer's original federal income tax return within the period described in section 4.01(1)(a) of this revenue procedure. The taxpayer also must attach the election to its federal income tax return in each of the 8 or 9 taxable years, as applicable, following the taxable year of the election. A statement meets the requirements of this section 4.11(1) if the statement—

(a) States "Section 108(i) Protective Election" across the top;

(b) Provides the information required under section 4.05(2)(a), (b), and (c) of this revenue procedure;

(c) Provides that the amounts described in sections 4.05(2)(d) and (e) of this revenue procedure are zero; and

(d) Provides the information described in section 4.06 of this revenue procedure.

(2) *Statements provided to shareholders and partners*.

(a) For each applicable debt instrument, a partnership or S corporation that makes a protective election must attach to the Schedule K–1 (Form 1065, Form 1065–B, or Form 1120S) it provides each of its partners or shareholders, as the case may be, for the taxable year in which the protective election is made a statement containing the information described in section 4.11(1)(b) of this revenue procedure (an S corporation need not provide its shareholders with the date(s) of the transaction(s) that would constitute the reacquisition transaction or transactions) and the partner's or shareholder's share of the additional COD income that would be deferred as described in section 4.11(1)(d) of this revenue procedure.

(b) The partnership or S corporation should not attach the statements described in this section 4.11(2) to the Schedules K–1 that are filed with the Service but must retain these statements, and each partner and shareholder must retain that partner's or shareholder's statement, in their respective books and records.

.12 *Election-Year Reporting by Tiered Pass-Through Entities*.

(1) A partnership required to file a U.S. partnership return other than under § 1.6031(a)–1(b)(5), or an S corporation, that receives a Schedule K–1 (Form 1065 or Form 1065–B) reflecting its share of any items listed in section 4.07(1) of this revenue procedure, must report on the Schedules K–1 (Form 1065, Form 1065–B, or Form 1120S) to its partners or shareholders, as the case may be, each partner's or shareholder's share of those items (an S corporation only reports to its shareholders the items described in section 4.07(1)(a) through (d) of this revenue procedure).

(2) If a partnership described in section 4.12(1) of this revenue procedure receives a statement described in sections 4.07(2) or 4.10(3) of this revenue procedure or this section 4.12(2), it must provide each of its partners a statement containing the partner's share of each of the items listed on each statement received by the partnership, including the information described in section 4.07(2)(b)(x) of this revenue procedure. If an S corporation receives a statement described in sections 4.07(2) or 4.10(3) of this revenue procedure or this section 4.12(2), it must provide each of its shareholders a statement containing the shareholder's share of each of the items listed on each statement received by the S corporation that are described in section 4.07(2)(b)(i), (ii), (iii), (iv) and (ix) of this revenue procedure. The partnership or S corporation must attach this statement or statements to the Schedule K–1 (Form 1065, Form 1065–B, or Form 1120S) that it provides to each of its partners or shareholders, as the case may be, for the taxable year of the partnership or S corporation. The partnership or S corporation should not attach these statements to the Schedules K–1 that are filed with the Service but must retain these statements, and each partner and shareholder must retain that partner's or shareholder's statement, in their respective books and records.

(3) A partnership that receives a statement described in this section 4 identifying its COD income amount with respect to an applicable debt instrument must allocate its COD income amount, without regard to § 108(i), to the partners in the partnership immediately before the reacquisition transaction in the manner in which the income would be included in the distributive shares of these partners under § 704 and the regulations thereunder, including § 1.704–1(b)(2)(iii). The partnership may determine in any manner the portion, if any, of a partner's COD income amount that is the partner's deferred amount and the portion, if any, of a partner's COD income amount that is the partner's included amount. No partner's deferred amount with respect to an applicable debt instrument may exceed its COD income amount with respect to the applicable debt instrument, and the aggregate of deferred amounts of its partners with respect to an applicable debt instrument must equal the partnership's deferred amount with respect to the applicable debt instrument. The partnership allocates amounts described in section 4.06 of this revenue procedure under this section 4.12(3) as if the additional COD income was realized.

(4) The deferred § 752 amount for partners in a partnership making a § 108(i) election is calculated only for the partnership's direct partners. No further adjustment to the deferred § 752 amount is made to reflect the basis or other attributes of

partners that are indirect partners in the partnership.

(5) If an S corporation receives a statement described in this section 4 identifying its COD income amount, deferred amount, included amount or additional COD income that would be deferred with respect to an applicable debt instrument, these amounts are shared *pro rata* only among those shareholders that are shareholders in the S corporation immediately before the reacquisition transaction.

(6) This paragraph 4.12(6) provides the rules for Category 1 and Category 2 filers of Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, as defined in the instructions for Form 8865, if the foreign partnership, for which the Category 1 or Category 2 filer has a filing requirement, receives a Schedule K–1 (Form 1065 or Form 1065–B) reflecting the partnership's share of any items listed in section 4.07(1) of this revenue procedure, or a statement described in sections 4.07(2) or 4.10(3) of this revenue procedure (because the foreign partnership owns an interest directly or indirectly in another partnership in which an election was made under § 108(i) with respect to that foreign partnership's distributive share from the other entity).

(a) For each partner for whom the Category 1 filer is required to complete a Schedule K–1 (Form 8865) (which includes the Category 1 filer itself), the Category 1 filer must:

(i) Include the information described in section 4.07(1) of this revenue procedure in the Schedule K–1 (Form 8865) that the Category 1 filer files with the Service and completes for the partner;

(ii) Produce a statement containing the partner's share of the items listed on each statement received by the partnership; and

(iii) Attach the statement described in section 4.12(6)(a)(ii) of this revenue procedure to each Schedule K–1 (Form 8865) that it is required to provide to a partner of the foreign partnership.

(b) A Category 2 filer must include its share of the information described in section 4.07(1) on the Schedule K–1 (Form 8865) that it is required to complete. Category 2 filers also must complete a statement containing their share of the items listed on each statement received by the partnership.

(c) The Category 1 and Category 2 filers should not attach the statements described in sections 4.12(6)(a)(ii) and 4.12(6)(b) of this revenue procedure, respectively, to the Schedules K–1 that are filed with the Service. However, Category 1 filers must retain the statements they complete and each partner must retain its own statement, in their respective books and records.

(7) If as a result of § 108(i)(5)(D)(ii), a partner of a partnership described in section 4.12(1) of this revenue procedure or a shareholder of an S corporation described in section 4.12(1) of this revenue procedure must recognize items deferred under § 108(i), the partnership or S corporation must report these items on the Schedule K–1 (Form 1065, Form 1065–B, or Form 1120S) and statements provided to the partner or shareholder pursuant to section 4.12(1) and (2) of this revenue procedure. Similar rules apply to Category 1 and Category 2 filers (Form 8865) described in section 4.12(6) of this revenue procedure.

(8) The provisions of section 4.12(2), (3), (5) and (6) of this revenue procedure also apply to a statement received that is described in section 4.11(2) of this revenue procedure, except that the information that must be provided are those items described in section 4.11(1)(b) of this revenue procedure (an S corporation need not provide its shareholders with the date(s) of the transaction(s) that would constitute the reacquisition transaction or transactions) and the share of the partner or shareholder in the amounts described in section 4.11(1)(d) of this revenue procedure.

SECTION 5. REQUIRED INFORMATION STATEMENT

.01 *Annual Information Statements.* Pursuant to § 108(i)(7)(B), a taxpayer that makes an election under § 108(i) (except for a protective election under section 4.11(1) of this revenue procedure) must attach a statement meeting the requirements of section 5.02 of this revenue procedure to its federal income tax return for each taxable year beginning with the taxable year following the taxable year for which the taxpayer makes the election and ending with the first taxable year in which all items deferred under § 108(i) have been recognized.

.02 *Contents of Statement.* A statement meets the requirements of this section 5.02 if the statement—

(1) *Label.* States "Section 108(i) Information Statement" across the top;

(2) *Required information.* Clearly identifies for each applicable debt instrument to which an election under § 108(i) applies—

(a) COD income deferred under § 108(i) that is included in income in the current taxable year under § 108(i)(1);

(b) COD income deferred under § 108(i) that is included in income in the current taxable year under § 108(i)(5)(D), including a description and date of the acceleration event described in § 108(i)(5)(D);

(c) COD income deferred under § 108(i) that has not been included in income in the current or prior taxable years (in the case of a partnership, the aggregate of the partners' deferred amounts that have not been included in income in the current or prior taxable years, and in the case of an S corporation, the S corporation's COD income deferred under § 108(i) that has not been included in income in the current or prior taxable years);

(d) OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(2)(A)(ii);

(e) OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(5)(D); and

(f) OID deduction deferred under § 108(i)(2)(A)(i) that has not been deducted in the current or prior taxable years.

(3) *Election attached.* Includes a copy of the election statement described in section 4.05 of this revenue procedure.

.03 *Additional Annual Reporting Requirements for Certain Partnerships.* The rules of this section 5.03 apply to partnerships other than partnerships described in section 5.05 of this revenue procedure.

(1) *In general.* A partnership that makes an election under § 108(i) (except for a protective election under section 4.11(1) of this revenue procedure) must attach to its federal income tax returns the statements required under section 5.01 of this revenue procedure. In addition, for each taxable year in which a statement is required under section 5.01 of this revenue procedure, the partnership must report on

the Schedule K–1 (Form 1065 or Form 1065–B) for each partner § 108(i) information in the manner described in section 4.07(1) of this revenue procedure.

(2) *Annual information statements provided to partners*. The partnership must attach to the Schedule K–1 (Form 1065) provided to each partner for each taxable year in which a statement is required under section 5.01 of this revenue procedure, a statement meeting the requirements of this section 5.03(2). The partnership should not attach these statements to the Schedules K–1 that are filed with the Service, but must retain these statements, and each partner must retain that partner's statement, in their respective books and records. A statement meets the requirements of this section 5.03(2) if the statement—

(a) *Label*. States "Section 108(i) Annual Information Statement for Partners" across the top of the statement.

(b) *Required information*. Clearly identifies for each applicable debt instrument to which a § 108(i) election applies—

(i) The partner's deferred amount that has not been included in income as of the end of the prior taxable year;

(ii) The partner's deferred amount that the partner must include in income in the current taxable year under § 108(i)(1);

(iii) The partner's deferred amount that the partner must include in income in the current taxable year under § 108(i)(5)(D)(i) or (ii);

(iv) The partner's deferred amount that has not been included in income in the current or prior taxable years;

(v) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) in the current taxable year;

(vi) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(2)(A)(ii);

(vii) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(5)(D)(i) or (ii);

(viii) The partner's share of the partnership's OID deduction deferred under § 108(i)(2)(A)(i) that has not been deducted in the current or prior taxable years; and

(ix) The partner's deferred § 752 amount that is treated as a distribution of money to the partner under § 752 in the current taxable year and any remaining deferred § 752 amount. If a partner fails to provide the written statement required by section 4.07(3) of this revenue procedure, the partnership must indicate that the amounts described in this section 5.03(2)(b)(ix) cannot be calculated because the partner did not provide the information necessary to report these amounts.

.04 *Additional Annual Reporting Requirements for an S Corporation*.

(1) *In general*. An S corporation that makes an election under § 108(i) (except for a protective election under section 4.11(1) of this revenue procedure) must attach to its federal income tax returns the statements required under section 5.01 of this revenue procedure. In addition, for each taxable year in which a statement is required under section 5.01 of this revenue procedure, the S corporation must report on the Schedule K–1 (Form 1120S) for each shareholder § 108(i) information in the manner described in section 4.08(1) of this revenue procedure.

(2) *Annual information statements provided to shareholders*. The S corporation must attach to the Schedule K–1 (Form 1120S) provided to each shareholder for each taxable year in which a statement is required under section 5.01 of this revenue procedure a statement meeting the requirements of this section 5.04(2). The S corporation should not attach these statements to the Schedules K–1 that are filed with the Service, but must retain these statements, and each shareholder must retain that shareholder's statement, in their respective books and records. A statement meets the requirements of this section 5.04(2) if the statement—

(a) *Label*. States "Section 108(i) Annual Information Statement for Shareholders" across the top;

(b) *Required information*. Clearly identifies for each applicable debt instrument to which an election under § 108(i) applies, the shareholder's share of the S corporation's—

(i) COD income deferred under § 108(i) that has not been included in income as of the end of the prior taxable year;

(ii) COD income deferred under § 108(i) that the shareholder must include in income in the current taxable year under § 108(i)(1);

(iii) COD income deferred under § 108(i) that the shareholder must include in income in the current taxable year under § 108(i)(5)(D)(i) or (ii);

(iv) COD income deferred under § 108(i) that has not been included in income in the current or prior taxable years;

(v) OID deduction deferred under § 108(i)(2)(A)(i) in the current taxable year;

(vi) OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(2)(A)(ii);

(vii) OID deduction deferred under § 108(i)(2)(A)(i) that is allowable as a deduction in the current taxable year under § 108(i)(5)(D)(i) or (ii); and

(viii) OID deduction deferred under § 108(i)(2)(A)(i) that has not been deducted in the current or prior taxable years.

.05 *Additional Annual Reporting Requirements for Certain Foreign Partnerships*.

(1) The rules of this section 5.05 apply to nonfiling foreign partnerships.

(2) A nonfiling foreign partnership that makes an election under § 108(i) (except for a protective election under section 4.11(1) of this revenue procedure) must file federal income tax returns with the Service containing the information under § 1.6031(a)–1(b)(5) for each taxable year in which a statement is required by section 5.01 of this revenue procedure.

(3) The nonfiling foreign partnership must attach to its federal income tax returns the statements required under section 5.01 of this revenue procedure, but only for that portion of the COD income allocated to affected partners.

(4) For each taxable year in which a statement is required under section 5.01 of this revenue procedure, the nonfiling foreign partnership must provide each affected partner a Schedule K–1 (Form 1065) reporting § 108(i) information in the manner described in section 4.07(1) of this revenue procedure. Except for this § 108(i) information, the partnership need not complete Part III of the Schedule K–1 (Form 1065). The partnership must provide each affected partner with a copy of the Schedule K–1 (Form 1065) by the date provided in § 1.6031(b)–1T(b). The partnership must attach the Schedules K–1

(Form 1065) to the federal income tax returns filed with the Service pursuant to section 5.05(2) of this revenue procedure.

(5) For each taxable year for which a statement is required under section 5.01 of this revenue procedure, the nonfiling foreign partnership must attach to each affected partner's Schedule K–1 (Form 1065) a statement meeting the requirements of section 5.03(2) of this revenue procedure. The partnership should not attach these statements to the Schedules K–1 that are filed with the Service, but must retain the statements, and each partner must retain that partner's statement, in their respective books and records.

.06 *Information Statements Made on Behalf of Certain Foreign Corporations*. Each controlling domestic shareholder must attach a statement identifying the foreign corporation and meeting the requirements of section 5.02 of this revenue procedure to the shareholder's federal income tax return for each taxable year for which a statement is required under section 5.01 of this revenue procedure.

.07 *Additional Annual Reporting Requirements for Tiered Pass-Through Entities*.

(1) A partnership required to file a U.S. partnership return other than under § 1.6031(a)–1(b)(5), or an S corporation, that receives a Schedule K–1 (Form 1065 or Form 1065–B) described in the second sentence of section 5.03(1) of this revenue procedure reflecting its share of any § 108(i) information must report on the Schedules K–1 (Form 1065, Form 1065–B, or Form 1120S) to its partners or shareholders, as the case may be, each partner's or shareholder's share of those items (an S corporation only reports to its shareholders the items described in section 4.07(1)(a) through (d) of this revenue procedure).

(2) If a partnership described in section 5.07(1) of this revenue procedure receives a statement described in sections 5.03(2) or 5.05(5) of this revenue procedure or this section 5.07(2), it must provide each of its partners a statement containing the partner's share of each of the items listed on each statement received by the partnership. If an S corporation receives a statement described in sections 5.03(2) or 5.05(5) of this revenue procedure or this section 5.07(2), it must provide each of its shareholders a statement containing the shareholder's share of each of the items listed on each statement received by the S corporation that are described in section 5.03(2)(b)(i) through (viii) of this revenue procedure. The partnership or S corporation must attach the statement or statements to the Schedule K–1 (Form 1065 or Form 1065–B) or Schedule K–1 (Form 1120S) that is provided to each of its partners or shareholders, as the case may be, for the taxable year of the partnership or S corporation. The partnership or S corporation should not attach these statements to the Schedules K–1 that are filed with the Service, but must retain these statements, and each partner and shareholder must retain that partner's or shareholder's statement, in their respective books and records.

(3) This paragraph 5.07(3) provides the rules for persons described in section 4.12(6) of this revenue procedure if the foreign partnership, for which the Category 1 or 2 filer has a filing requirement, receives a Schedule K–1 (Form 1065 or Form 1065–B) reflecting the partnership's share of any items described in the second sentence of section 5.03(1) of this revenue procedure, or a statement described in sections 5.03(2) or 5.05(5) of this revenue procedure (because the foreign partnership owns an interest directly or indirectly in another partnership in which an election was made under § 108(i) with respect to that foreign partnership's distributive share from the other entity).

(a) For each partner for whom the Category 1 filer is required to complete a Schedule K–1 (Form 8865) (which includes the Category 1 filer itself), the Category 1 filer must:

(i) Include the information described in section 4.07(1) of this revenue procedure in the Schedule K–1 (Form 8865) that the Category 1 filer files with the Service and completes for the partner;

(ii) Produce a statement containing the partner's share of the items listed on each statement received by the partnership; and

(iii) Attach the statement described in section 5.07(3)(a)(ii) of this revenue procedure to each Schedule K–1 (Form 8865) that it is required to provide to a partner of the foreign partnership.

(b) A Category 2 filer must include its share of the information described in section 4.07(1) on the Schedule K–1 (Form 8865) that it is required to complete. Category 2 filers also must complete a statement containing their share of the items listed on each statement received by the partnership.

(c) The Category 1 and Category 2 filers should not attach the statements described in sections 5.07(3)(a)(ii) and 5.07(3)(b) of this revenue procedure, respectively, to the Schedules K–1 that are filed with the Service. However, Category 1 filers must retain the statements they complete and each partner must retain its own statement, in their respective books and records.

(4) If as a result of § 108(i)(5)(D)(ii), a partner of a partnership described in section 5.07(1) of this revenue procedure or a shareholder of an S corporation described in section 5.07(1) of this revenue procedure must recognize items deferred under § 108(i), the partnership or S corporation must report these items on the Schedule K–1 (Form 1065, Form 1065–B, or Form 1120S) and statements provided to the partner or shareholder pursuant to section 5.07(1) and (2) of this revenue procedure. Similar rules apply to Category 1 and Category 2 filers (Form 8865) described in section 4.12(6) of this revenue procedure.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for reacquisitions of applicable debt instruments in taxable years ending after December 31, 2008.

SECTION 7. TRANSITION RULE

.01 *Noncomplying Election*. Except as otherwise provided in this section 7.01, the Service will treat a § 108(i) election as effective if a taxpayer files an election with the taxpayer's federal income tax return filed on or before September 16, 2009, using any reasonable procedure to make the election. However, an election that does not comply with section 4 of this revenue procedure will not be effective unless the taxpayer on or before November 16, 2009, files an amended return for the taxable year of the election and complies with the requirements of section 4 of this revenue procedure.

.02 *Modification of Election*. A taxpayer that files a § 108(i) election on or before September 16, 2009, may modify that election by filing an amended return on or before November 16, 2009 (for ex-

ample, to modify the amount of COD income the taxpayer elects to defer). To be effective, a modification of an election described in the preceding sentence must satisfy the requirements for an election described in section 4 of this revenue procedure.

.03 *Notations*. A taxpayer that files the amended return on paper must write "Section 108(i) Election" on the top of the first page. A taxpayer that files the amended return electronically should indicate "Section 108(i) Election" on the return. See Publication 4163, *Modernized e-File (MeF) Information for Authorized IRS e-file Providers for Business Returns Tax Year 2008* for more details.

SECTION 8. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–2147.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in sections 4, 5 and 7. This information is required to determine the amount of income and deductions a taxpayer elects to defer and to track those amounts until the taxpayer has reported all deferred income and deductions on the taxpayer's tax return. This information will be used during examination to verify that a taxpayer has correctly deferred income and deductions. The collection of information is required to obtain a benefit. The likely respondents are C corporations, shareholders of S corporations, partners of partnerships, and other individuals engaged in a trade or business, that reacquire applicable debt instruments in 2009 or 2010.

The estimated total annual reporting burden is 300,000 hours. The estimated annual burden per respondent varies from 1 to 8 hours, depending on individual circumstances, with an estimated average of 6 hours. The estimated number of respondents is 50,000.

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

DRAFTING INFORMATION

The principal authors of this revenue procedure are Megan A. Stoner of the Office of Associate Chief Counsel (Passthroughs & Special Industries) and Craig Wojay of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Megan A. Stoner at (202) 622–3070 for questions involving partnerships and S corporations, William E. Blanchard at (202) 622–3950 for questions involving OID, Ronald M. Gootzeit at (202) 622–3860 for questions involving foreign entities, Robert Rhyne at (202) 622–7790 for questions involving earnings and profits and consolidated groups, and Craig Wojay at (202) 622–4920 for questions on § 108(i) generally (not toll-free calls).