ATTACHMENT

1. QI is subject to the following laws and regulations of [name of country] governing the requirements of QI to obtain documentation confirming the identity of QI's account holders.
2. QI represents that [name and citations to laws and regulations identified in item 1, above] are enforced by [name of enforcement body] and QI shall provide the IRS with an English translation of any reports or other documentation issued by [name of enforcement body] that relates to QI's failure to comply with [laws and regulations identified in 1, above].
3. QI represents that the following penalties apply for failure to obtain, maintain, and evaluate documentation obtained under [name and citations to laws and regulations identified in item 1].
4. QI shall use the following specific documentary evidence to comply with section 5 of this Agreement:
   a. For natural persons:
   b. For legal persons:
5. QI shall follow the procedures set forth below to confirm the identity of account holders that do not open accounts in person.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective on January 24, 2000. The IRS may conclude agreements under this revenue procedure at any time after that date, but such agreements will not have effect before the date specified in the agreement.

SECTION 6. EFFECT ON OTHER REVENUE PROCEDURES

This revenue procedure supersedes Rev. Proc. 98–27, 1998–15 I.R.B. 30. In addition, Notice 99–8, 1999–5 I.R.B. 26 is obsoleted.

SECTION 7. FURTHER INFORMATION

For further information regarding this revenue procedure, telephone the Office of Assistant Commissioner (International) at (202) 874-1800 (not a toll-free number).

Cash or Deferred Arrangements; Nondiscrimination

Notice 2000–3

I. PURPOSE

This notice provides additional guidance regarding 401(k) plans that are intended to satisfy the 401(k) safe harbors. This guidance responds to comments and suggestions regarding ways to make it easier for employers both to adopt and to administer 401(k) safe harbor plans. The notice:

- Encourages adoption of 401(k) safe harbor plans by giving sponsors of existing 401(k) plans the flexibility to wait as late as December 1 of a calendar year to decide to adopt the 401(k) safe harbor 3-percent employer nonelective contribution method for that calendar year;
- Permits 401(k) safe harbor plans to match elective or employee contributions on the basis of compensation for a payroll period, month, or quarter;
- Provides an extended period of time — until May 1, 2000 — for 401(k) plan sponsors adopting the 401(k) safe harbor methods for the first time in 2000 to provide the required safe harbor notice to employees;
- Provides explicitly that 401(k) safe harbor plans are permitted to require salary reduction elections to be made using whole percentages of pay or whole dollar amounts;
- Permits plan sponsors to provide the 401(k) safe harbor notice electronically and otherwise simplifies the notice requirement;
- Permits 401(k) safe harbor plans to provide matching contributions on an employee's aggregate employee and elective contributions;
- Makes clear that 401(k) safe harbor plans are permitted to apply to employee after-tax contributions a suspension similar to the 12-month suspension that may be applied to employee elective contributions after an in-service withdrawal of those contributions;
- Permits plan sponsors using the 401(k) safe harbor matching contribution method to exit the safe harbor prospectively during a plan year (and switch to ADP and ACP nondiscrimination testing) if employees are notified beforehand;
- Clarifies the interaction between the 401(k) safe harbors and the election to separately test otherwise excludable employees for purposes of the § 410(b) minimum coverage requirements; and
- Makes clear how the 401(k) safe harbor rules apply in the case of a profit sharing plan to which a 401(k) feature is added for the first time during a plan year.

In addition to modifying the guidance provided in Notice 98–52, 1998–46 I.R.B. 16, relating to 401(k) safe harbor plans, this notice requests comments regarding two significant areas that relate to 401(k) plans in general. The two areas are (1) potential approaches for simplifying the multiple use test applicable to § 401(k) plans, and (2) potential approaches for applying the highly compensated employee definition under § 414(q), the nondiscrimination requirements under § 401(k) and 401(m), and possibly other applicable qualification requirements, when a plan sponsor is involved in a merger, acquisition, disposition, or similar transaction.

II. BACKGROUND

A. SBJPA Amendments to §§ 401(k), 401(m), and 414(q)

Under § 401(k)(3) and § 401(m)(2) of the Code, the actual deferral percentage ("ADP") and the actual contribution percentage ("ACP") of highly compensated employees ("HCEs") are compared with those of nonhighly compensated employees ("NHCEs"). Section 414(q) defines a highly compensated employee for purposes of §§ 401(k) and 401(m), and for other purposes under the Code.

Section 1433(a) and (b) of the Small Business Job Protection Act of 1996 ("SBJPA") added new §§ 401(k)(12) and 401(m)(11) to the Code, effective for plan years beginning after December 31, 1998, to provide design-based safe harbor methods for satisfying the ADP test contained in § 401(k)(3)(A)(ii) and the ACP test contained in § 401(m)(2). Section 401(k)(12) provides that a cash or deferred arrangement ("CODA") is treated as satisfying the ADP test if the CODA meets certain contribution and notice requirements. Section 401(m)(11) provides that a defined contribution plan is treated as satisfying the ACP test with respect to matching contributions if the plan meets the contribution and notice requirements contained in § 401(k)(12) and in addition meets certain limitations on the amount and rate of matching contributions available under the plan.

Section 1433(c) of SBJPA amended § 401(k)(3)(A) and § 401(m)(2)(A), effective for plan years beginning after December 31, 1996, to provide for the use of prior year data in determining the ADP and ACP of NHCEs, while current year data is used for HCEs. Alternatively, an employer may elect to use current year data for determining the ADP and ACP for both HCEs and NHCEs, but this election may be changed only as provided by the Secretary. Prior to the effective date of these amendments, plans were required to use current year data in determining the ADP and ACP for both HCEs and NHCEs. Section 1433(d) of SBJPA amended § 401(k)(3) and § 401(m)(3) to provide a special rule for determining the ADP and ACP for NHCEs for the first plan year of a plan (other than a successor plan) where the prior year testing method is used.

Section 1433(e) of SBJPA amended § 401(k)(8)(C) and § 401(m)(6)(C), effective for plan years beginning after December 31, 1996, to provide that the distribution of excess contributions and excess aggregate contributions will be made on the basis of the amount of contributions by, or on behalf of, each HCE. Prior to the effective date of these amendments, plans were required to distribute excess contributions and excess aggregate contributions using a method based on the actual deferral ratio or actual contribution ratio of each HCE.

Section 1431 of SBJPA amended § 414(q)(1) to provide that the term "highly compensated employee" means any employee who (1) was a 5-percent owner at any time during the year or the preceding year, or (2) for the preceding year had compensation from the employer in excess of $80,000 (as adjusted) and, if the employer so elects, was in the top-paid group for the preceding year. The amendments made by § 1431 generally apply to years beginning after December 31, 1996.

B.Previous Guidance on the SBJPA Amendments to §§ 401(k), 401(m), and 414(q)

Notice 972, 1997–1 C.B. 348, provides guidance on determining the individuals who are taken into account in computing the ADP or ACP for NHCEs for the prior year under the prior year testing method. The notice also prescribes rules for distributions of excess contributions and excess aggregate contributions.

Notice 97–45, 1997–2 C.B. 296, provides guidance relating to the definition of highly compensated employee under § 414(q), as amended by § 1431 of SBJPA.

Notice 98–1, 1998–3 I.R.B. 42, provides guidance relating to the current and prior year ADP and ACP testing methods.

Notice 98–52 provides guidance on the safe harbor methods under § 401(k)(12) for satisfying the ADP test contained in § 401(k)(3)(A)(ii) and safe harbor methods under § 401(m)(11) for satisfying the ACP test contained in § 401(m)(2).

C. Definitions

Any term used in this notice that is defined in Notice 97–45, 98–1, or 98–52, or in the regulations under § 401(k), 401(m), or 414(q) has the same meaning as in those notices and regulations. For example, the term "employee contribution" means any mandatory or voluntary contribution to the plan that is treated at the time of contribution as an after-tax employee contribution (e.g., by reporting the contribution as taxable income subject to applicable withholding requirements) and is allocated to a separate account to which the attributable earnings and losses are allocated.

In addition, for purposes of this notice, (1) a "401(k) safe harbor plan" means a CODA that is intended to satisfy the ADP test safe harbor under section V of Notice 98–52, and, if applicable, a defined contribution plan (including a § 403(b) plan) that is intended to satisfy the ACP test safe harbor under section VI of Notice 98–52, (2) the "401(k) safe harbor nonelective contribution method" means the alternative for satisfying the safe harbor contribution requirement of the ADP test safe harbor under section V.B. of Notice 98–52 that includes satisfying the nonelective contribution requirement under section V.B.2. of Notice 98–52, (3) the "401(k) safe harbor matching contribution method" means the alternative for satisfying the safe harbor contribution requirement of the ADP test safe harbor under section V.B. of Notice 98–52 that includes satisfying the matching contribution requirement under section V.B.1. of Notice 98–52, and (4) a "401(k) safe harbor method" means the 401(k) safe harbor nonelective contribution method or the 401(k) safe harbor matching contribution method.

D. Effect on Regulations

Because of the amendments made to §§ 401(k), 401(m), and 414(q) by SBJPA, as well as by other recent legislation, certain portions of §§ 1.401(k)–1, 1.401(m)–1, 1.401(m)–2, and 1.414(q)–1T of the Income Tax Regulations no longer reflect current law. However, these regulations continue to apply to the extent they are not inconsistent with the Code, Notices 97–2, 97–45, 98–1, and 98–52, this notice, and any subsequent guidance.

III. Questions and Answers Relating to the 401(k) and (m) Safe Harbor Methods

Flexibility in Adoption of 401(k) Safe Harbor Nonelective Contribution Method

Q-1. By what date must the sponsor of a 401(k) plan adopt the 401(k) safe harbor nonelective contribution method for a plan year?

A-1. Generally, a plan that is intended to satisfy the 401(k) safe harbor requirements for a plan year must, prior to the beginning of the plan year, contain language to that effect and must specify the 401(k) safe harbor method that will be used. (However, see section XI.B. of Notice 98–52 and Rev. Proc. 99–23, 1999–16 I.R.B. 5, for the remedial amendment period applicable to plan changes incorporating the 401(k) safe harbor provisions.)

Notwithstanding section XI.A. of Notice 98–52, a plan that provides that it will satisfy the current year ADP (and, if applicable, ACP) testing method for a plan year may be amended not later than 30 days before the last day of the plan year to specify that the 401(k) safe harbor nonelective contribution method will be used for the plan year (including that the safe harbor nonelective contribution will be made), provided that the plan otherwise satisfies the ADP (and, if applicable, ACP) test safe harbor for the plan year (including the notice requirement under section V.C. of Notice 98–52, as modified by this notice). For purposes of the preceding sentence, in applying the content requirement of section V.C.1 of Notice 98–52:

(1) Instead of stating the amount of the safe harbor nonelective contribution to be made under the plan, the notice

given to eligible employees before the beginning of the plan year must provide that (a) the plan may be amended during the plan year to provide that the employer will make a safe harbor nonelective contribution of at least 3 percent to the plan for the plan year, and (b) if the plan is so amended, a supplemental notice will be given to eligible employees 30 days prior to the last day of the plan year informing them of such an amendment, and

(2) A supplemental notice must be provided to all eligible employees no later than 30 days prior to the last day of the plan year stating that a 3 percent safe harbor nonelective contribution will be made for the plan year. For administrative convenience, the supplemental notice may be provided separately or as part of the safe harbor notice for the following plan year.

Similar rules apply if, pursuant to section IX.A.1. of Notice 98–52, the safe harbor nonelective contribution is made to another plan of the employer.

Thus, for example, a plan sponsor that maintains a calendar-year 401(k) plan using the current year ADP testing method and that wishes to have the flexibility to decide toward the end of a plan year whether or not to adopt the 401(k) safe harbor nonelective contribution method with respect to its 401(k) plan could achieve that flexibility by providing the initial notice described in section V.C. of Notice 98–52 (as modified by this Q&A-1, and Q&A-7 and Q&A-8 of this notice) before the beginning of the plan year, as provided under section V.C.2. of Notice 98–52 (as modified by Q&A-9 of this notice). If the plan sponsor then decides to adopt the 401(k) safe harbor nonelective contribution method for the plan year, the plan sponsor must, by December 1 of the plan year, (1) amend the 401(k) plan accordingly and (2) provide a supplemental notice to all eligible employees stating that a 3-percent safe harbor nonelective contribution will be made for the plan year.

A plan sponsor that takes advantage of the flexibility provided under this Q&A-1 is not required to continue using the 401(k) safe harbor nonelective contribution method for the following plan year and is not limited in the number of years that it takes advantage of this flexibility. In order to further facilitate the adoption of the 401(k) safe harbor nonelective contribution method under this Q&A-1, the Service intends to provide a simplified, pre-approved means of adopting the 401(k) safe harbor nonelective contribution method under the Service's master and prototype plan program.

Safe Harbor Matching Contribution Requirements

Q-2. Can a 401(k) safe harbor plan match elective and employee contributions on a payroll-by-payroll basis (instead of on an annual basis) without making additional contributions at the end of the year to take into account the total amount of an employee's compensation for the plan year?

A-2. Notwithstanding section VII.A. (or any other provision) of Notice 98–52, the requirements of sections V.B.1. and VI.B. of Notice 98–52 that relate to matching contributions may be met for a plan year by meeting such requirements either (1) with respect to the plan year as a whole, or (2) if the plan so provides, separately with respect to each payroll period (or with respect to all payroll periods ending with or within each month or plan-year quarter) taken into account under the arrangement for the plan year (the "payroll period method"). If the payroll period method is used, however, matching contributions with respect to elective or employee contributions made during a plan year quarter beginning after May 1, 2000 must be contributed to the plan by the last day of the following plan year quarter. Accordingly, in the case of a calendar year plan that uses the payroll period method, matching contributions with respect to elective or employee contributions made during the calendar quarter beginning July 1, 2000, must be contributed to the plan by December 31, 2000. The payroll period method applies only for purposes of satisfying the ADP safe harbor matching contribution requirements of § 401(k)(12) (section V.B.1. of Notice 98–52) and the ACP safe harbor matching contribution requirements of § 401(m)(11) (section VI.B. of Notice 98–52).

Q-3. Can a 401(k) safe harbor plan require that employees make elective contributions in whole percentages of pay or whole dollar amounts?

A-3. Notwithstanding section V.B.1.c.ii. of Notice 98–52, a plan will not fail to satisfy the requirements of sections V.B.1. and VI.B. of Notice 98–52 that relate to matching contributions merely because the plan requires employees to make cash or deferred or employee contribution elections in whole percentages of compensation or whole dollar amounts.

Q-4. Can a 401(k) safe harbor plan suspend additional employee contributions for up to 12 months after the in-service withdrawal of employee contributions?

A-4. Notwithstanding section V.B.1.c. and section VI.B.3. of Notice 98–52, a plan will not fail to satisfy the ACP test safe harbor of section VI of Notice 98–52 merely because, after a withdrawal of employee contributions from the plan, the plan suspends additional employee contributions for a period that does not exceed 12 months. See section V.B.1.c.iv. of Notice 98–52 for a similar exception that applies for purposes of hardship distributions of elective contributions.

Q-5. How do the rules of sections V.B.1. and VI.B.3. of Notice 98–52 apply to a plan that provides matching contributions on both elective contributions and employee contributions?

A-5. A plan will not fail to satisfy the requirements of section V.B.1.a., V.B.1.b., or VI.B.3.(iii) of Notice 98–52 merely because the plan provides matching contributions on both elective contributions and employee contributions if, under the terms of the plan, either (1) the matching contributions provided on an employee's elective contributions are not affected by the amount of the employee's employee contributions or (2) matching contributions are made with respect to the sum of an employee's elective and employee contributions under the same terms as matching contributions are made with respect to elective contributions.

For example, a plan will not fail to satisfy the matching contribution requirement of section V.B.1. or the ACP test safe harbor of section VI of Notice 98–52 merely because the plan provides a required matching contribution equal to 100 percent of the sum of each eligible employee's elective and employee contributions up to 4 percent of compensation. This is the case even if, during a plan year, an eligible employee first makes

employee contributions of 4 percent of compensation that are matched by the employer and subsequently makes elective contributions that go unmatched, provided that the same match would have been available if the employee had instead made only elective contributions.

Q-6. May a plan that uses the 401(k) safe harbor matching contribution method suspend matching contributions on future elective and employee contributions during a plan year and instead use the current year ADP (and, if applicable, ACP) testing method for the plan year?

A-6. A plan that uses the 401(k) safe harbor matching contribution method will not fail to satisfy § 401(k) (or § 401(m)) for a plan year merely because the plan is amended during the plan year to reduce or eliminate matching contributions, provided:

(1) A supplemental notice is given to all eligible employees explaining the consequences of the amendment and informing them of the effective date of the reduction or elimination of matching contributions and that they have a reasonable opportunity (including a reasonable period) to change their cash or deferred elections and, if applicable, their employee contribution elections;

(2) The reduction or elimination of matching contributions is effective no earlier than the later of (i) 30 days after eligible employees are given the supplemental notice and (ii) the date the amendment is adopted;

(3) Eligible employees are given a reasonable opportunity (including a reasonable period) prior to the reduction or elimination of matching contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(4) The plan is amended to provide that the ADP test and, if applicable, the ACP test will be performed and satisfied for the entire plan year using the current year testing method; and

(5) All other safe harbor requirements are satisfied through the effective date of the amendment.

Notice Requirement

Q-7. Can a plan use electronic media to satisfy the 401(k) safe harbor notice requirement?

A-7. The Service and Treasury are currently reviewing the legal and policy issues relating to the satisfaction of the safe harbor notice requirement through the use of electronic media. Prior to the issuance of additional guidance on this matter, however, a plan will not fail to satisfy the notice requirement of section V.C. of Notice 98–52 (as modified by this notice) with respect to an employee merely because, instead of receiving the notice on a written paper document, the employee receives the notice through an electronic medium reasonably accessible to the employee, provided that (1) the system under which the electronic notice is provided is reasonably designed to provide the notice in a manner no less understandable to the employee than a written paper document and (2) under such system, at the time the notice is provided, the employee is advised that the employee may request and receive the notice on a written paper document at no charge, and, upon request, that document is provided to the employee at no charge. This Q&A-7 also applies for purposes of providing the supplemental notices under Q&A-1 and Q&A-6 of this notice.

Q-8. Can a safe harbor notice cross-reference the plan's summary plan description for a portion of the information required in the notice?

A-8. Section V.C. of Notice 98–52 provides that the notice requirement of that section is satisfied if each eligible employee for the plan year is given written notice of the employee's rights and obligations under the plan and the notice satisfies the content requirement of paragraph 1 of that section and the timing requirement of paragraph 2 of that section.

Notwithstanding paragraph 1.a. of section V.C. of Notice 98–52, a plan will not fail to satisfy the content requirement merely because, in the case of the information described in items (ii) (relating to any other contributions under the plan), (iii) (relating to the plan to which safe harbor contributions will be made), (iv) (relating to the type and amount of compensation that may be deferred), and (vii) (relating to withdrawal and vesting provisions) of paragraph 1.a., the notice instead cross-references the relevant portions of an up-to-date summary plan description that has been provided (or concurrently is provided) to the employee. However, the notice must still accurately describe (1) the safe harbor matching or nonelective contribution formula used under the plan (including a description of the levels of matching contributions, if any, available under the plan) and state that these contributions (as well as elective contributions) are fully vested when made and (2) how to make cash or deferred elections (including any administrative requirements that apply to such elections) and the periods available under the plan for making such elections. In addition, the notice must also provide information that makes it easy for eligible employees to obtain additional information about the plan (including an additional copy of the summary plan description) such as telephone numbers, addresses and, if applicable, electronic addresses, of the individuals or offices from whom employees can obtain such plan information.

Q-9. By what date must the safe harbor notice be provided to employees in the case of a plan that adopts a 401(k) safe harbor method for the first time in the year 2000?

A-9. Generally, the notice required under section V.C. of Notice 98–52 must be provided in accordance with the timing requirements of section V.C.2. (i.e., the notice must be provided within a reasonable period before the beginning of the plan year (or, in the year an employee becomes eligible, within a reasonable period before the employee becomes eligible)). However, in an effort to allow plan sponsors that are considering the adoption of a 401(k) safe harbor method to fully utilize the guidance provided in this notice for plan years beginning in the year 2000, the Service and Treasury have determined that transition relief is appropriate. Accordingly, in the case of a plan sponsor that adopts a 401(k) safe harbor method for the first time with respect to a plan for a plan year that begins on or after January 1, 2000 and on or before June 1, 2000, the notice described in section V.C. of Notice 98–52 satisfies the timing requirement for that plan year if the notice is given on or before May 1, 2000. This transition relief applies whether the 401(k) safe harbor method is adopted under a newly established 401(k) plan or under a preexisting 401(k) plan.

In order to satisfy the 401(k) safe harbor requirements for the plan year, however, a plan that uses the transition relief

provided under this Q&A-9 still must satisfy the otherwise applicable requirements of Notice 98–52 (as modified by this notice) with respect to the entire plan year. Thus, for example, in the case of a 401(k) plan that uses the 401(k) safe harbor matching contribution method, matching contributions still must be made with respect to elective contributions made prior to the date the safe harbor notice is provided to employees in the same amount as if the 401(k) safe harbor matching contribution method had been in place since the beginning of the plan year.

Interaction Between Safe Harbor Methods and § 410(b)(4) Election

Q-10. Is a plan required to provide safe harbor matching or nonelective contributions to participants who have not yet attained age 21 and completed a year of service if the plan uses one of the 401(k) safe harbor methods?

A-10. As provided in section IX.B.1. of Notice 98–52, if, pursuant to § 410(b)(4)(B), an employer applies § 410(b) separately to the portion of a plan (within the meaning of § 414(l)) that benefits only employees who satisfy age and service conditions under the plan that are lower than the greatest minimum age and service conditions permitted under § 410(a), the plan is treated as two separate plans for purposes of § 401(k), and the ADP test safe harbor need not be satisfied with respect to both plans in order for one of the plans to take advantage of the ADP test safe harbor. Accordingly, a plan that uses one of the 401(k) safe harbor methods is not required to provide safe harbor matching or nonelective contributions to participants who have not yet attained age 21 and completed a year of service. Those employees do not have to be treated as eligible employees for purposes of the 401(k) safe harbors, so long as the employer has elected to treat them separately for coverage purposes pursuant to § 410(b)(4). However, in such a case, the plan must specifically provide that elective contributions (and, if applicable, matching contributions) on behalf of those employees will satisfy the ADP test (and, if applicable, the ACP test).

Addition of 401(k) Safe Harbor Provisions to Existing Profit-Sharing Plans

Q-11. Can a CODA that is added to an existing profit-sharing plan for the first time during a plan year use a 401(k) safe harbor method for that plan year?

A-11. Generally, the safe harbor requirements must be satisfied for the entire plan year (see sections V.A. and VI.A. of Notice 98–52). In addition, except in the case of a newly established plan, the plan year must be 12 months long (see section X of Notice 98–52). Notwithstanding these requirements, however, in the case of a CODA that is added to an existing profit-sharing, stock bonus, or pre-ERISA money purchase pension plan for the first time during a plan year, the requirements of section V of Notice 98–52 will be treated as being satisfied for the entire plan year and the CODA will not be treated as failing to satisfy the requirements of section X of Notice 98–52, provided (1) the plan is not a successor plan (within the meaning of Notice 98–1), (2) the CODA is made effective no later than 3 months prior to the end of the plan year, and (3) the requirements of Notice 98–52 are otherwise satisfied for the entire period from the effective date of the CODA to the end of the plan year. Thus, an existing calendar-year profit-sharing plan that does not contain a CODA may be amended as late as October 1 to add a CODA that uses a 401(k) safe harbor method for that plan year.

A similar rule applies for purposes of section VI of Notice 98–52 in the case of the addition of matching contributions for the first time to an existing defined contribution plan at the same time as the adoption of the CODA.

IV SIMPLIFYING THE LIMITATION ON MULTIPLE USE

The limitation on multiple use applies to the current and prior year ADP and ACP testing methods (i.e., the nondiscrimination testing methods that § 401(k) plans must satisfy if they do not satisfy the 401(k) safe harbors or the SIMPLE 401(k) requirements). The limitation on multiple use is a nondiscrimination provision intended to limit the extent to which highly compensated employees receive greater benefits (as a percentage of pay) than nonhighly compensated employees, primarily under § 401(k) plans that provide for matching contributions. The Service and Treasury are considering approaches that would substantially simplify the limitation on multiple use administratively, while retaining most of the value of this limitation in ensuring a fairer distribution of benefits under § 401(k) plans and, in many cases, encouraging employers to make fully-vested nonelective contributions on behalf of nonhighly compensated employees.

Generally, the average rate of elective contributions under a § 401(k) plan on behalf of highly compensated employees may not exceed 125 percent of the average rate of elective contributions on behalf of nonhighly compensated employees. However, the Code provides an "alternative limitation" that permits the average rate of elective contributions under a § 401(k) plan on behalf of highly compensated employees to exceed 125 percent of the average rate on behalf of nonhighly compensated employees, provided that average rate for highly compensated employees is not greater than 2 percentage points more than the average rate for nonhighly compensated employees and is not greater than 200 percent of that of nonhighly compensated employees. The alternative limitation is particularly relevant where the average rate of elective contributions on behalf of nonhighly compensated employees is relatively low. For example, if the average rate of elective contributions on behalf of nonhighly compensated employees is 4 percent of pay, then the average rate of elective contributions on behalf of highly compensated employees may not exceed 6 percent of pay. Absent the alternative limitation, the average rate of elective contributions on behalf of highly compensated employees could not exceed 5 percent in such a case. Similar rules apply separately to the average rate of matching and employee after-tax contributions of highly compensated employees under a § 401(m) plan.

Section 401(m)(9) requires the Secretary of the Treasury to "prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k) including . . . such regulations as may be necessary to prevent the multiple use of the alternative limitation with respect to any highly compensated employee." Accordingly, while the alter-

native limitation may be used to satisfy either the nondiscrimination test for elective contributions or the nondiscrimination test for matching and employee after-tax contributions, the alternative limitation is not available to satisfy both tests. Absent the statutorily contemplated limitation on multiple use, the combined rates of elective and matching contributions on behalf of highly compensated employees under a § 401(k) plan that provides for matching contributions could, for example, be as much as 8 percent (i.e., an ADP of 4 percent and an ACP of 4 percent) while the combined rates for nonhighly compensated employees could be as little as 4 percent (i.e., an ADP of 2 percent and an ACP of 2 percent). In this case, the limitation on multiple use would reduce this 4-percentage-point disparity to 2_ percentage points.

While many employers choose to comply with the limitation on multiple use by reducing or limiting the elective and/or matching contributions on behalf of highly compensated employees, other employers instead increase the employer contributions made on behalf of nonhighly compensated employees. Accordingly, because of the limitation on multiple use, some moderate-income employees covered under 401(k) plans that provide matching contributions receive employer-provided benefits that amount to hundreds of dollars a year.

However, the approach taken under existing regulations in implementing the limitation on multiple use may be unnecessarily complicated. As a result, the Service and Treasury are reviewing potential changes to these regulations that would substantially simplify the application of the limitation on multiple use.

Under one possible approach, the multi-step mathematical test used in determining the aggregate limit on the rates of contributions for highly compensated employees would be replaced by a simple "look-up" table that is based on ranges of aggregate contribution rates for nonhighly compensated employees. For example, such a table could provide that if the combined ADP and ACP on behalf of nonhighly compensated employees is between 5 percent and 6 percent, then the combined ADP and ACP on behalf of highly compensated employees could be as much as 3 percentage points higher.

Alternatively, or in addition, the scope of the limitation's application might be narrowed slightly in order to give relief in cases where the value of the limitation would be inconsequential in comparison to the administrative expense of compliance. For example, where the combined ADP and ACP on behalf of nonhighly compensated employees exceeds a certain level (e.g., 9 percent or 10 percent), the limitation on multiple use might be deemed satisfied.

The Service and Treasury welcome comments on these and other potential approaches for simplifying the limitation on multiple use. Comments on the effect of the SBJPA changes to the methods for correcting excess contributions and excess aggregate contributions and the relation of those changes to corrections of multiple use limitation failures are also welcome. In addition, comments are welcome regarding whether it is more appropriate (as a matter of authority or otherwise) for simplification of the limitation on multiple use to be effected administratively or legislatively.

V POTENTIAL APPROACHES FOR APPLYING VARIOUS QUALIFICATION REQUIREMENTS IN MERGERS, ACQUISITIONS, DISPOSITIONS, AND SIMILAR TRANSACTIONS

The Service and Treasury are in the process of developing guidance regarding the application of the nondiscrimination requirements under § 401(k) and § 401(m), and the highly compensated employee definition under § 414(q), in situations where the entities sponsoring the plans are involved in mergers, acquisitions, dispositions, or similar transactions. Uncertainty among plan sponsors regarding the appropriate application of various qualification requirements in the context of business transactions and reorganizations may be leading to reduced employee protections, increased transaction costs for employers, and the inconsistent application of these requirements among different employers.

The guidance developed by the Service and Treasury will be designed to balance the need to protect employees' pension rights and benefits and provide for the fair distribution of tax-favored pension benefits with the potential burdens on employers of data collection and compliance in the context of business transactions and reorganizations. Simplified alternatives may be provided to address those types of transactions in which the information flow between the selling and purchasing entities or other entities involved in the transactions traditionally has been minimal.

As part of this process, the Service and Treasury are seeking comments from plan participants, plan sponsors, and other interested parties regarding the following:

(1) The types of business transactions and reorganizations (e.g., stock acquisitions, acquisitions of substantially all the assets of a trade or business, or other economically similar transactions) that reasonably would warrant continuity of treatment for purposes of the nondiscrimination requirements under § 401(k) and § 401(m) and the highly compensated employee definition under § 414(q), as well as the degree of specificity that is desirable or appropriate in describing these transactions.

(2) The application of the nondiscrimination requirements under § 401(k) and § 401(m) and the highly compensated employee definition under § 414(q) in cases where plans are combined or divided during (instead of at the beginning of) a plan year as a result of a business transaction or reorganization that occurs during a plan year.

(3) Whether more than one testing alternative may be appropriate when applying the nondiscrimination requirements under § 401(k) and § 401(m) in the case of mid-year transactions. For example, under certain circumstances, one approach to mid-year business transactions that also involve combining plans might be to give plan sponsors the option of applying the § 401(k) and § 401(m) nondiscrimination requirements on a pre-transaction and post-transaction basis as if there were separate short plan years for the uncombined and combined plans, or applying these requirements once on the basis of the entire plan year for the combined plan. A similar approach might apply in cases where plans are divided as a result of mid-year business transactions.

(4) The application of other plan qualification provisions (in addition to the

nondiscrimination requirements for § 401(k) and § 401(m) plans and the highly compensated employee definition under § 414(q)) in the context of business transactions and reorganizations, whether or not such transactions occur in the middle of a plan year. For example, § 414(a)(2) grants the Secretary of the Treasury the authority to prescribe regulations regarding the treatment of service with a predecessor employer as service with a successor employer. Comments are invited on whether regulations should be proposed to address situations in which participants experience an interruption of their vesting service under § 411(a) and eligibility service under § 410(a) by reason of certain business transactions or reorganizations.

VI REQUEST FOR COMMENTS

In addition to inviting comments on the potential approaches for simplifying the limitation on multiple use and for applying various qualification requirements in cases where plan sponsors are involved in mergers, acquisitions, and similar transactions, the Service and Treasury invite comments on the 401(k) safe harbor guidance provided in this notice. It is anticipated that further guidance in these areas would take the form of proposed regulations.

Comments should be submitted by March 24, 2000, in writing, and should reference Notice 2000–3. Comments can be addressed to CC:DOM:CORP:R (Notice 2000–3), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (Notice 2000–3), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may transmit comments electronically via the following Internet site: Cynthia.Grigsby@m1.irscounsel.treas.gov.

VII. EFFECT ON OTHER DOCUMENTS

Notice 98–52 is modified.

PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1669.

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

The collections of information in this notice are in section III, Q&As 1 and 2. The collections of information are required to enable personnel in the Tax Exempt and Government Entities Division of the Internal Revenue Service to determine if an employer's retirement plan satisfies the requirements to obtain favorable tax treatment and to inform plan participants of their rights and obligations under the plan. The likely respondents are businesses or other for-profit institutions, and not-for-profit institutions.

The estimated total annual reporting burden is 8,000 hours.

The estimated annual burden per respondent is 1 hour and 20 minutes. The estimated number of respondents is 6,000. The estimated annual frequency of responses is on occasion.

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 notice is Roger Kuehnle of the Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at (202) 622-6074/6075 (not toll-free numbers) between the hours of 1:30 and 3:30 p.m. Eastern Time, Monday through Thursday.

Section 1504(d) Elections — Deferral of Termination

Notice 2000–7

PURPOSE

The purpose of this Notice is to provide guidance regarding the effect of the repeal of certain Canadian banking legislation on elections under section 1504(d) of the Internal Revenue Code.

BACKGROUND

Section 1504(d) of the Code allows, in certain circumstances, a domestic corporation owning or controlling, directly or indirectly, 100 percent of the capital stock of a Mexican or Canadian corporation, to elect to treat such corporation as a domestic corporation for all purposes of subtitle A of the Code. Among other requirements, such an election may be made only if the sole purpose for maintaining such corporation is to comply with Canadian or Mexican law regulating the title and operation of property.

If an election under section 1504(d) is in effect with respect to a Canadian or Mexican corporation, and the relevant provision in Canadian or Mexican law regulating the title and operation of property is repealed, it is the view of Treasury and the IRS that the election under section 1504(d) generally is terminated as of the effective date of the repeal. However, a foreign corporation may continue to be viewed as maintained solely for the purpose of complying with Canadian or Mexican law for a short period of time following the repeal of that foreign law if the taxpayer takes reasonable and expeditious measures to respond to the change in foreign law and for good reason is unable to complete such measures by the effective date of the repeal, as would be the case if the taxpayer is required to obtain regulatory approval in order to convert the foreign corporation to a branch of the U.S. parent and cannot obtain such approval by the effective date of the repeal. In such a case, the foreign corporation will continue to be viewed as maintained solely for the purpose of complying with Canadian or Mexican law only for so long as is reasonably necessary to convert to branch form and only for so long as the taxpayer persists in its efforts to convert to branch form during that period. The IRS may issue guidance identifying whether and the extent to which this short period of time exists in appropriate circumstances not specifically addressed by

this Notice. Following the end of any such period (or immediately upon the effective date of the repeal of the foreign law if there is no such period), if the foreign corporation remains in existence, it is no longer maintained solely for the purpose of complying with the repealed foreign law.

Repeal of Canadian Banking Legislation

Until recently, Canada prohibited foreign banks from operating in branch form within Canada, under the Bank Act (Canada), S.C. 1991, c. 46 ("Original Act"). Canadian banking operations of a foreign bank were required to be conducted within a Canadian corporation. Thus, Canadian banking subsidiaries of U.S. banks may have qualified for the election under section 1504(d).

Effective June 28, 1999, the Original Act was amended to permit foreign banks to perform certain specified banking functions in Canada directly through foreign branches rather than through Canadian subsidiaries ("Amended Act"). Under the Amended Act, all Canadian subsidiaries of foreign banks seeking to convert to a branch operation must obtain the approval of the Minister of Finance and the Office of the Superintendent of Financial Institutions.

In addition, on May 11, 1999, the Canadian government announced its intention to enact legislation that would allow an indefinite deferral of the Canadian tax imposed upon the liquidation of a Canadian banking subsidiary as part of its conversion to branch form ("Relief Legislation"). Department of Finance Release 99–044 (May 11, 1999). Under the Relief Legislation, relief will be available only if the bank complies, on or before December 31, 2000, with paragraphs 1.0(1.1)(b) and (c) of the draft "Guide to Foreign Bank Branching" issued by the Office of the Superintendent of Financial Institutions ("Foreign Branch Guide"). In addition, the Canadian banking subsidiary must complete its conversion to branch form on or before the earlier of (i) the day that is six months after the day that the Superintendent of Financial Institutions makes an order in respect of the foreign bank under subsection 534(1) of the Amended Act, or (ii) December 31, 2002. The terms of the proposed Relief Legislation indicate that Canada has determined that the period described above is a reasonable period for taxpayers to take the steps necessary to convert to branch form.

Effect of Repeal of Canadian Banking Legislation

Except as provided in the following sentence, a Canadian banking subsidiary that was, immediately prior to June 28, 1999, maintained solely for the purpose of complying with the Original Act shall be considered to be maintained solely for the purpose of complying with the Original Act until the earlier of the date that is six months after the day that the Superintendent of Financial Institutions makes an order in respect of the foreign bank under subsection 534(1) of the Amended Act, or December 31, 2002. If, however, the bank does not comply with paragraphs 1.0(1.1)(b) and (c) of the Foreign Branch Guide on or before December 31, 2000, the Canadian banking subsidiary shall be considered to be maintained solely for the purpose of complying with the Original Act only until December 31, 2000.

After the applicable period described in the preceding paragraph, any Canadian banking subsidiary remaining in existence shall be maintained solely for the purpose of complying with foreign law as to title and operation of property only if it is maintained solely for the purpose of complying with the Amended Act or any other applicable Canadian law regulating the title and operation of property.

The principal author of this notice is Kenneth D. Allison of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this notice contact Mr. Allison at 202-622-3860 (not a toll-free call).

Weighted Average Interest Rate Update

Notice 2000–8

Notice 88–73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for December 1999 is 6.35 percent.

The following rates were determined for the plan years beginning in the month shown below.

Drafting Information

The principal author of this notice is Todd Newman of Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, call the Employee Plans Actuarial hotline, (202) 622-6076 between 2:30 and 3:30 p.m. Eastern time (not a toll-free number). Mr. Newman's number is (202) 622-8458 (also not a toll-free number).

Month	Year	Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
January	2000	6.01	5.41 to 6.31	5.41 to 6.61

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Credit for Increasing Research Activities

REG–105606–99

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the computation of the credit for increasing research activities (the research credit) for members of a controlled group and the allocation of the credit under section 41(f) of the Internal Revenue Code. These proposed regulations are intended to provide guidance on the proper method for computing the research credit for members of a controlled group and the proper method for allocating the group credit to members of the group. These proposed regulations reflect changes to section 41 made by the Revenue Reconciliation Act of 1989 (the 1989 Act). This document also provides notice of a public hearing on these regulations.

DATES: Written or electronic comments must be received no later than April 5, 2000. Outlines of topics to be discussed at the public hearing scheduled for April 26, 2000 at 10 a.m. must be received by April 5, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–105606–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–105606–99), Courier's Desk, Internal RevenueService, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.gov/prod/taxregs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Lisa J. Shuman at (202)622-3120 (not a toll-free number); concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, La Nita Van Dyke at (202)622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by March 6, 2000.
Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is contained in the preamble under the heading "**Proposed Effective Date**." The information is required by the IRS to ensure that members of a controlled group filing claims for refund based on a change in method of allocating the research credit to members of the group do not together claim in excess of 100% of the credit with respect to prior taxable years.

Estimated total annual reporting burden: 200 hours.

Estimated average annual burden hours per respondent: 20 hours.

Estimated number of respondents: 10.

Estimated frequency of responses: On occasion.

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

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

Background

The research credit provisions originally appeared in section 44F of the Internal Revenue Code of 1954 (the 1954 Code), as added to the 1954 Code by section 221 of the Economic Recovery Tax Act of 1981. Section 471(c) of the Tax Reform Act of 1984 redesignated section 44F as section 30. Section 231 of the Tax Reform Act of 1986 (the 1986 Act) redesignated section 30 as section 41 and substantially modified the research credit provisions. The 1989 Act substantially revised the computation of the research credit.

On May 17, 1989, the IRS published in the **Federal Register** (54 FR 21203) final regulations under section 41. The 1989 final regulations generally do not reflect the amendments to section 41 made by the 1986 Act, the 1989 Act, and other subsequent legislative revisions to the research credit.

The amendments proposed by this document contain proposed rules relating to

the computation of the research credit for members of a controlled group and the allocation of the credit under section 41(f). These proposed regulations reflect changes to the research credit rules made by the 1989 Act and Small Business Job Protection Act of 1996, which introduced the alternative incremental research credit.

Pre-1990 Rules for Computing the Research Credit for Members of a Controlled Group and Allocating the Credit among Members of the Group

Prior to the enactment of the 1989 Act, the research credit was computed by multiplying the credit rate by the excess of the taxpayer's current year qualified research expenses over the average of the taxpayer's qualified research expenses for the preceding three years.

Before amendment by the 1989 Act, section 41(f)(1) provided rules for computing the research credit for members of a controlled group (generally a group of corporations or unincorporated businesses linked by common ownership of more than 50 percent). Section 41(f)(1) treated all members of a controlled group as a single taxpayer for purposes of computing the credit and allocated the credit to the members of the group based on the member's proportionate share of the increase in qualified research expenses giving rise to the credit.

The legislative history to the 1981 Act indicates that the research credit aggregation rules were enacted to ensure that the research credit would be allowed only for actual increases in research expenditures. The aggregation rules were intended to prevent artificial increases in research expenditures by shifting expenditures among commonly controlled or otherwise related persons. H. Rep. No. 97–201, 1981–3 C.B. (Vol. 2) 364 and Sen. Rep. 97–144, 1981–3 C.B. (Vol. 2) 442.

An example that appears in both §1.41–8(a)(4) of the 1989 regulations and the legislative history to the 1981 Act illustrates the computation and allocation of the research credit under section 41(f)(1) before the 1989 Act amendments to the research credit computation. In the example, the allowable group research credit is allocated among the members experiencing an increase in qualified research expenses over their base period research expenses. The member allocation is based on the ratio that each member's increase in its qualified research expenses over its base period research expenses bears to the sum of the group's increases in qualified research expenses.

Post-1989 Rules for Computing the Research Credit for Members of a Controlled Group and Allocating the Regular Research Credit among Members of the Group

In the 1989 Act, Congress revised the computation of the research credit. Congress retained the incremental structure of the credit but altered the computation to focus on whether and the extent to which a taxpayer increases the proportion of its qualified research expenses relative to its gross receipts.

Under section 41, as amended in 1989, the research credit is computed by multiplying the credit rate by the excess of the taxpayer's current year qualified research expenses over a "base amount." The base amount is defined in section 41(c) as the greater of: (1) fifty percent of the taxpayer's credit year qualified research expenses (the minimum base amount); or, (2) the taxpayer's "fixed-base percentage" times the taxpayer's average annual gross receipts for the four taxable years preceding the taxable year for which the credit is being determined.

In general, a taxpayer's fixed-base percentage is defined in section 41(c)(3)(A) as the ratio that the taxpayer's aggregate qualified research expenses for its taxable years beginning after December 31, 1983, and before January 1, 1989 bear to its aggregate gross receipts for the same period. Section 41(c)(3)(B) provides rules for computing the fixed-base percentage for start-up companies. Section 41(c)(3)(C) provides that the maximum fixed-base percentage is 16%.

Section 41(f)(1), as amended by the 1989 Act, continues to provide rules for computing the research credit for members of a controlled group. As under prior law, all members of a controlled group are treated as a single taxpayer for purposes of computing the credit. However, the allocation rule was amended to eliminate any reference to an "increase" in qualified research expenses. Under the amended allocation rule, the group credit is allocated among the members of the group based on each member's "proportionate share of the qualified research expenses and basic research payments giving rise to the credit."

In explaining the 1989 Act revisions to the research credit, the House Report simply states that the rules relating to the aggregation of related persons and changes in ownership are the same as under present law with the modification that when a business changes hands, qualified research expenses and gross receipts for periods prior to the change of ownership are treated as transferred with the trade or business which gave rise to those expenditures and receipts for purposes of recomputing a taxpayer's fixed-base percentage. H. Rep. No. 101-247 at 1202. The legislative history to the 1989 Act does not refer to the elimination of the word "increase" from the allocation rule.

In the light of the statutory changes enacted in 1989, taxpayers have questioned the proper method for computing the research credit for members of a controlled group and the proper method for allocating the group credit to members of the group under the new rules.

The proposed regulations provide that, for purposes of computing the group credit, all of the computational rules of section 41 are applied on an aggregate basis. This is consistent with the statutory prescription that the controlled group be treated as a single taxpayer and is necessary to preclude taxpayers from creating artificial increases in the credit by shifting qualified research expenses and gross receipts among commonly controlled or otherwise related persons.

In proposing rules for the allocation of the credit, Treasury and the IRS considered, but were not persuaded by, certain taxpayers' argument that the elimination of the word "increase" from the allocation rule in the statute requires that the credit be allocated on the basis of the gross amount of qualified research expenses incurred by the various members of the controlled group. Treasury and the IRS believe that elimination of the word "increase" was necessitated by the 1989 statutory amendments to the computation of the research credit, which afford a credit in certain circumstances even where the taxpayer (or each member of a controlled group) is decreasing its gross amount of qualified research expenses

(e.g., because the taxpayer's gross receipts also are decreasing). However, there is no indication that the elimination of the word "increase" was intended to suggest that the credit be allocated without regard to its incremental nature. To the contrary, the statutory prescription that the credit be allocated according to each member's proportionate share of the qualified research expenses "giving rise to" the credit supports a rule that allocates the credit to those members whose share of current year qualified research expenses exceeds their share of the base amount. Thus, the proposed regulation provides that the group research credit is allocated to each member based on the ratio that the member's increase in its qualified research expenses over its base amount bears to the sum of each member's increase in qualified research expenses over its base amount. The member's base amount is computed by multiplying the group fixed-base percentage by the member's average annual gross receipts for the four preceding tax years.

In order to prevent manipulation of the amount of credit allocated to a consolidated group of corporations that is a member of a controlled group with other taxpayers, Treasury and the IRS considered a special rule for allocating the research credit that would treat all members of a consolidated group as a single taxpayer for purposes of allocating the research credit among members of the controlled group. Treasury and the IRS request comments on special rules for allocating the research credit among members of a controlled group that contains a consolidated group of corporations.

Allocation of the Credit for Basic Research Payments and the Alternative Incremental Research Credit

The proposed regulations also address the computation and allocation of the group credit for basic research payments (certain amounts paid to qualified organizations for basic research) and for the alternative incremental research credit (an elective alternative method of computing the research credit, under which taxpayers are assigned a lower three-tiered fixed base percentage, and the credit rate is reduced).

As in the case of the regular credit for qualified research expenses, the proposed regulations provide that all computations with respect to the group credit for basic research payments and the alternative incremental research group credit are undertaken on an aggregate basis. Similarly, these group credits are allocated to the various group members on an incremental basis.

Proposed Effective Date

The regulations generally are proposed to be applicable for taxable years ending on or after the date proposed regulations are filed with the Federal Register, but are also proposed to be retroactive in certain limited circumstances to prevent abuse. To prevent taxpayers that are members of a controlled group from together claiming in excess of 100% of the credit with respect to prior taxable years, the rules for allocating the group credit would apply to any taxable year beginning after December 31, 1989, in which, as a result of inconsistent methods of allocation, the members of a controlled group as a whole claimed more than 100% of the allowable group credit. In the case of a group whose members have different taxable years and whose members used inconsistent methods of allocation, the members of the group as a whole shall be deemed to have claimed more than 100% of the allowable group credit.

No claim for refund (1) attributable to a change in method of allocation; (2) pertaining to a taxable year ending before December 30, 1999; and (3) filed after December 30, 1999, will be allowed unless the taxpayer submits a statement identifying all members of the controlled group for the taxable year at issue. The statement must contain a declaration signed by the taxpayer under penalties of perjury that states: "To the best of my knowledge and belief, taking into account prior claims, this amended claim and any related adjustments, no more than the total amount of the group credit will be allocated to the members of the controlled group."

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the expectation that few, if any, small entities will file claims for refund attributable to a change in method of allocating the research credit among members of its controlled group. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronic comments are submitted timely to the IRS. Treasury and the IRS request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 26, 2000 at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be dis-

cussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies by April 5, 2000). A period of 10 minutes will be allotted to each person making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Lisa J. Shuman of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. In §1.41-0, the table of contents is amended by revising the entries for §1.41–8(a), (a)(1), (a)(4), and (b) and adding entries for §1.41–8(a)(5) and (a)(6) to read as follows:

§1.41–0 Table of contents.

* * * * *

§1.41–8 Aggregation of expenditures.

(a) Controlled group of corporations; trades or businesses under common control.

(1) In general.

* * * * *

(4) Allocation of credit for basic research payments.

(5) Allocation of alternative incremental research credit.

(6) Examples.

(b) For taxable years beginning before January 1, 1990.

* * * * *

Par. 3. In §1.41–8, paragraphs (a)(1), (a)(4), (b), and (c)(1) are revised and paragraphs (a)(5) and (a)(6) are added to read as follows:

§1.41–8 Aggregation of expenditures.

(a) *Controlled group of corporations; trades or businesses under common control*—(1) *In general.* In determining the amount of the credit for increasing research activities allowed with respect to a trade or business that at the end of its taxable year is a member of a controlled group of corporations or a member of a group of trades or businesses under common control, all members of the group are treated as a single taxpayer. Thus, for purposes of determining the amount of the credit, all of the rules in section 41, including, for example, the rules in section 41(c)(2) (pertaining to the minimum base amount), section 41(c)(3)(B) (pertaining to the fixed-base percentage for start-up companies), and section 41(c)(3)(C) (pertaining to maximum base amount) are applied only to the aggregate computation of the base amount. The credit (if any) allowed to any member is determined on the basis of the ratio that its increase (if any) in its qualified research expenses over its base amount bears to the aggregate increases in qualified research expenses over the base amount of all members of the group. For purposes of the preceding sentence, a member computes its base amount by multiplying the group fixed-base percentage by the member's average annual gross receipts for the four preceding tax years.

* * * * *

(4) *Allocation of credit for basic research payments.* The credit (if any) attributable to basic research payments allowed to a member is determined on the basis of the ratio that its excess (if any) of basic research payments over its qualified organization base period amount bears to the aggregate excess of basic research payments over the qualified organization base period amount of all members in the group. For purposes of the preceding sentence, a member computes its qualified organization base period amount using similar principles to those used in paragraph (a)(1) to determine the member's base amount.

(5) *Allocation of alternative incremental research credit.* If the credit is computed under the alternative incremental research credit rules, the credit (if any) allowed to the member is determined on the basis of the ratio that its excess (if any) of qualified research expenses over 1% of its average annual gross receipts for the four taxable years preceding the taxable year for which the credit is being determined bears to the aggregate excess of qualified research expenses over 1% of the average annual gross receipts of all members of the group for the four taxable years preceding the taxable year for which the credit is being determined.

(6) *Examples.* The following examples illustrate the provisions of this paragraph (a):

Example 1. (i) *Facts.* A controlled group of three corporations (all of which are calendar-year taxpayers) had qualified research expenses for the credit year 1999, qualified research expenses for the period 1984 through 1988, gross receipts for the period 1984 through 1988, and average annual gross receipts for the four years preceding the credit year as follows:

	A	B	C	Total
Credit Year Qualified Research Expenses	$200x	$20x	$110x	$330x
1984-1988 Qualified Research Expenses	$40x	$10x	$100x	$150x
1984-1988 Gross Receipts	$1,000x	$350x	$150x	$1500x
Average Annual Gross Receipts for 4 years preceding Credit Year	$1,200x	$200x	$300x	$1700x

(ii) *Computation of the group credit*. (A) The group research credit is computed as if the three corporations are one taxpayer. The research credit is equal to 20 percent of the excess of the group's aggregate credit year qualified research expenses over the group's base amount.

(B) The group's base amount equals the greater of fifty percent of the group's credit year qualified research expenses (the minimum base amount); or, the group's fixed-base percentage times the group's average annual gross receipts for the four taxable years preceding the credit year. The group's fixed-base percentage is the ratio that the group's aggregate qualified research expenses for the taxable years beginning after December 31, 1983, and before January 1, 1989 bear to its aggregate gross receipts for the same period. Therefore, the group's fixed-base percentage is 150x/1500x or 10% and the group's base amount is $170x, the greater of 50% of $330 or 10% of $1,700x.

(C) The group's research credit is equal to 20 percent of the excess of the group's aggregate credit year qualified research expenses over the group's base amount. That is 20% of ($330x - $170x) or $32x.

(iii) *Allocation of the group credit*. The group research credit of $32x is allocated to the members of the group based on the ratio that the member's increase in its qualified research expenses over the member's base amount bears to the sum of the member increases in qualified research expenses over their base amounts. The member's base amount is computed by multiplying the group fixed-base percentage of 10% by the member's average annual gross receipts for the four preceding tax years. The $32x credit is allocated as follows:

Member	Credit Year Qualified Research Expenses	Member Base Amount	Increase	Ratio	Credit
A	$200x	$120x	$80x	80/160	$16x
B	$20x	$20x		0	
C	$110x	$30x	$80x	80/160	$16x

Example 2. (i) *Facts*. The facts are the same as in *Example 1* except that A had no qualified research expenses during the credit year. The following table shows the group's qualified research expenses for the credit year, qualified research expenses for the period 1984 through 1988, gross receipts for the period 1984 through 1988, and average annual gross receipts for the four years preceding the credit year:

	A	B	C	Total
Credit Year Qualified Research Expenses	0	$20x	$110x	$130x
1984-1988 Qualified Research Expenses	$40x	$10x	$100x	$150x
1984-1988 Gross Receipts	$1,000x	$350x	$150x	$1500x
Average Annual Gross Receipts for 4 years preceding Credit Year	$1,200x	$200x	$300x	$1700x

(ii) *Computation of the group credit*. Under these facts, the controlled group's credit year qualified research expenses are less than the group's base amount of $170x, and no credit is allowed to the group unless the group elects to use the alternative incremental research credit under section 41(c)(4).

If the group elects to use the alternative incremental credit under section 41(c)(4), the group is allowed a credit equal to .0165($25.5x - $17x) + .022($34x - $25.5x) + .0275($130x - $34x) or $2.96725x.

(iii) *Allocation of the group credit*. Assuming that the group elects to use the alternative incremental research credit under section 41(c)(4), the group research credit of $2.96725x is allocated to the members of the group based on the ratio that the member's qualified research expenses over one percent of the member's average annual gross receipts for the four preceding years bears to the sum of the member increases in qualified research expenses over one percent of their average annual gross receipts for the four preceding years. The $2.96725x credit is allocated as follows:

Member	Credit Year Qualified Research Expenses	1 % of Member Average Annual Gross Receipts for 4 Preceding Tax Years	Increase	Ratio	Credit
A	$0	$12x	0	0	
B	$20x	$2x	$18x	18/125	$.427284x
C	$110x	$3x	$107x	107/125	$2.539966x

Example 3. (i) *Facts.* A controlled group of three corporations (all of which are calendar-year taxpayers) had qualified research expenses for the credit year 1999, qualified research expenses for the period 1984 through 1988, gross receipts for the period 1984 through 1988, and average annual gross receipts for the four years preceding the credit year as follows:

	A	B	C[1]	Total
Credit Year Qualified Research Expenses	$200x	$20x	$50x	$270x
1984-1988 Qualified Research Expenses	$55x	$15x	0	$70x
1984-1988 Gross Receipts	$1000x	$400x	0	$1400x
Average Annual Gross Receipts for 4 years preceding Credit Year	$1200x	$200x	0	$1400x

[1]C began business in 1999.

(ii) *Computation of the group credit.* (A) The group research credit is computed as if the three corporations are one taxpayer. The research credit is equal to 20 percent of the excess of the group's aggregate credit year qualified research expenses over the group's base amount.

(B) The group's base amount equals the greater of: fifty percent of the group's credit year qualified research expenses (the minimum base amount), or, the group's fixed-base percentage times the group's average annual gross receipts for the four taxable years preceding the credit year. The group's fixed-base percentage is the ratio that the group's aggregate qualified research expenses for the taxable years beginning after December 31, 1983, and before January 1, 1989 bear to its aggregate gross receipts for the same period. Therefore, the group's fixed-base percentage is 70x/1400x or 5% and the group's base amount is $135x, the greater of 50% of $270x or 5% of $1,400x.

(C) The group's research credit is equal to 20 percent of the excess of the group's aggregate credit year qualified research expenses over the group's base amount. That is 20% of ($270x - $135x) or $27x.

(iii) *Allocation of the group credit.* The group research credit of $27x is allocated to the members of the group based on the ratio that the member's increase in its qualified research expenses over the member's base amount bears to the sum of the member increases in qualified research expenses over their base amounts. The member's base amount is computed by multiplying the group fixed-base percentage of 5% by the member's average annual gross receipts for the four preceding tax years. The $27x credit is allocated as follows:

Member	CreditYear Qualified Research Expenses	Member Base Amount	Increase	Ratio	Credit
A	$200x	$60x	$140x	14/20	$18.9x
B	$20x	$10x	$10x	1/20	$1.35x
C	$50x	0	$50x	5/20	$6.75x

Example 4. (i) *Facts.* The facts are the same as in *Example 3* except that C began business in 1989. A, B, and C had qualified research expenses for the credit year 1999, qualified research expenses for the period 1984 through 1988, gross receipts for the period 1984 through 1988, and average annual gross receipts for the four years preceding the credit year as follows:

	A	B	C	Total
Credit Year Qualified Research Expenses	$200x	$20x	$50x	$270x
1984-1988 Qualified Research Expenses	$55x	$15x	0	$70x
1984-1988 Gross Receipts	$1,000x	$400x	0	$1,400x
Average Annual Gross Receipts for 4 years preceding Credit Year	$1,200x	$200x	$1,000x	$2,400x

(ii) *Computation of the group credit.* (A) The group research credit is computed as if the three corporations are one taxpayer. The research credit is equal to 20 percent of the excess of the group's aggregate credit year qualified research expenses over the group's base amount.

(B) The group's base amount equals the greater of: fifty percent of the group's credit year qualified research expenses (the minimum base amount), or, the group's fixed-base percentage times the group's average annual gross receipts for the four taxable years preceding the credit year. The group's fixed-base percentage is the ratio that the group's aggregate qualified research expenses for the taxable years beginning after December 31, 1983, and before January 1, 1989 bear to its aggregate gross receipts for the same period. Therefore, the group's fixed-base percentage is 70x/1400x or 5% and the group's base amount is $135x, the greater of 50% of $270x or 5% of $2,400x.

(C) The group's research credit is equal to 20 percent of the excess of the group's aggregate credit year qualified research expenses over the group's base amount. That is 20% of ($270x- $135x) or $27x.

(iii) *Allocation of the group credit*. The group research credit of $27x is allocated to the members of the group based on the ratio that the member's increase in its qualified research expenses over the member's base amount bears to the sum of the member increases in qualified research expenses over their base amounts. The member's base amount is computed by multiplying the group fixed-base percentage of 5% by the member's average annual gross receipts for the four preceding tax years. The $27x credit is allocated as follows:

Member	CreditYear Qualified Research Expenses	Member Base Amount	Change	Ratio	Credit
A	$200x	$60x	$140x	14/15	$25.2x
B	$20x	$10x	$10x	1/15	$1.8x
C	$50x	50x	0	0	0

(b) *For taxable years beginning before January 1, 1990.* For taxable years beginning before January 1, 1990, see § 1.41-8 in effect prior to December 30, 1999 as contained in 26 CFR part 1 revised April 1, 1999.

(c) *Tax accounting periods used*—(1) *In general*. The credit allowable to a member of a controlled group of corporations or of a group of trades or businesses under common control is that member's share of the aggregate credit computed as of the end of such member's taxable year. In computing the aggregate credit in the case of a group whose members have different taxable years, a member shall generally treat the taxable year of another member that ends with or within the credit year of the computing member as the credit year of that other member. In computing the aggregate base amount, the gross receipts taken into account with respect to another member shall include that other member's gross receipts for the four taxable years of that other member preceding the credit year of that other member.

* * * * *

John M. Dalrymple,
Acting Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on December 30, 1999, 2:06 p.m., and published in the issue of the Federal Register for January 4, 2000, 65 F.R. 258)

Deposits of Excise Tax

Announcement 2000–5

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document invites comments from the public on issues that the IRS may address in proposed regulations relating to the requirements for excise tax returns and deposits. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be submitted by April 6, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–103827–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–103827–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, the Regulations Unit, (202) 622-7180; concerning the proposals, Susan Athy, (202) 622-3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

The Excise Tax Procedural Regulations (26 CFR part 40) set forth the requirements related to filing the Quarterly Federal Excise Tax Return, Form 720, and making deposits of excise taxes. Certain provisions of the current regulations are complicated. The IRS is interested in simplifying the filing and deposit rules both as to the timing and the calculation of the correct amount to deposit. Simplification would reduce recordkeeping burdens and costs for taxpayers, improve compliance, and facilitate proper administration of the excise taxes and trust funds. The IRS requests comments on how the regulations can be simplified; comments are requested in particular on the following issues.

Time for Filing Returns

The regulations currently provide that the Form 720 generally must be filed by the last day of the first calendar month following the quarter for which it is made. However, in the case of returns related to taxes imposed by chapter 33 (communications and air transportation) and section 4681 (ozone-depleting chemicals), the due date is the last day of the second calendar month

following the quarter for which it is made.

The IRS requests comments on whether there should be one filing date for all Form 720 filers, such as 30 days after the end of the quarter. This would be a simple rule that would apply equally to all taxpayers.

Use of Government Depositaries

Background. The regulations currently provide that excise taxes must be deposited on a semimonthly basis. Generally, taxes must be deposited by the 9th day of the semimonthly period following the semimonthly period for which the deposit is made (the 9-day rule). There are, however, exceptions to this rule. Taxes on ozone-depleting chemicals must be deposited by the end of the second semimonthly period following the semimonthly period for which the deposit is made (the 30-day rule). In addition, for taxes imposed by section 4081 (gasoline, diesel fuel, and kerosene), communications taxes, and air transportation taxes, taxpayers may choose a deposit rule other than the 9-day rule. For section 4081 taxes, section 518 of the Highway Revenue Act of 1982 provides that a qualified person may deposit by the 14th day of the semimonthly period following the semimonthly period for which it is made if the deposit is made by electronic funds transfer (the 14-day rule). For communications and air transportation taxes, if a person computes the amount of tax to be reported and deposited on the basis of amounts considered as collected, the person may deposit the taxes considered as collected during a semimonthly period by the third banking day after the seventh day of the semimonthly period (the alternative method).

The regulations also provide that the amount of the deposit for a semimonthly period must equal the amount of net tax liability incurred during that period unless either the look-back quarter safe harbor rule or the current liability safe harbor rule applies. In general, the look-back quarter safe harbor rule is met if the deposits for each semimonthly period in the quarter are at least 1/6 of the net liability reported for that tax in the second calendar quarter preceding the current quarter, and the current liability safe harbor rule is met if the deposit for each semimonthly period is at least 95 percent of the net tax liability for the semimonthly period. Safe harbor rules apply separately to each class of tax. Each semimonthly deposit must be timely made at an authorized Government depository. Also, the amount of any underpayment must be paid by the due date of the return, without extension. A failure to meet all the deposit requirements of a safe harbor rule for any semimonthly period eliminates the availability of that safe harbor for the entire quarter.

As the above description of current regulations illustrates, the deposit rules are quite complicated, and taxpayers have experienced difficulty in complying with them. In addition, under existing safe harbor rules, penalties for failure to deposit may be imposed for all semimonthly periods in a quarter if a taxpayer fails to deposit timely and in the correct amount during any semimonthly period in that quarter.

Request for Comments. With respect to the deposit rules, the IRS specifically requests comments on the following issues:

1. Whether there should be a single deposit date for all excise taxes, such as 14 days after the end of the semimonthly period. (The IRS believes it would be appropriate to retain the alternative method allowing communications and air transportation tax collectors to file returns and make deposits based on amounts billed or tickets sold.)
2. Whether a taxpayer should have to deposit at least 95 percent of tax liability incurred for the corresponding semimonthly period (in lieu of the current requirement of 100 percent with safe harbor rules).
3. Whether the amount required to be deposited for a quarter should be computed without reduction for the amounts of any claims made on Schedule C of Form 720 for that quarter.

Judith C. Dunn,
Associate Chief Counsel (Domestic).

(Filed by the Office of the Federal Register on January 6, 2000, 8:45 a.m. , and published in the issue of the Federal Register for January 7, 2000, 65 F.R. 1076)

Adequate Disclosure of Gifts; Correction

Announcement 2000–6

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 8845, 1999–51 I.R.B. 684) which were published in the **Federal Register** on Friday, December 3, 1999, 64 FR 67767, relating to the valuation of priorgifts in determining estate and gift tax liability, and the period of limitations for assessing andcollecting gift tax.

DATES: This correction is effective December 3, 1999.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, (202) 622-3090, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 6501 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8845) contain errors that may prove to be misleadingand are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8845), which were the subject of FR Doc. 99–30944, is corrected as follows:

§301.6501(c)–1 [Corrected]

1. On page 67772, column 3, §301.6501(c)–1(f)(5), line 9 from the top of the column, thelanguage "transfer will not be subject to inclusion" is corrected to read "transfer will be subject to inclusion".
2. On page 67772, column 3, §301.6501(c)–1(f)(5), line 11 from the top of the column, the language "purposes. On the other hand, if the" is corrected to read "purposes only to the extent that a completed gift would be so included. On the other hand, if the".

Cynthia E. Grigsby,
Chief, Regulations Unit
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on January 6, 2000, 8:45 a.m., and published in the issue of the Federal Register for January 7, 2000, 65 F.R. 1059)

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 law 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 the 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 Contribution 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.—Statements of Procedral 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.
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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1999–27 through 1999–52 is in Internal Revenue Bulletin 2000–1, dated January 3, 2000.

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