

# Qualified Transportation Fringes

## Notice 2010-94

This notice delays the effective date of Revenue Ruling 2006-57. Revenue Ruling 2006-57 provides guidance to employers on the use of smartcards, debit or credit cards, or other electronic media to provide qualified transportation fringes under sections 132(a)(5) and (f) of the Code. This guidance is intended to provide relief to mass transit providers that have been unable to update their systems in order to comply with the Revenue Ruling guidelines prior to the current effective date of January 1, 2011. The effective date of Revenue Ruling 2006-57 is further delayed until January 1, 2012. Revenue Ruling 2006-57 is modified.

Revenue Ruling 2006-57, 2006-2 C.B. 911, provides guidance to employers on the use of smartcards, debit or credit cards, or other electronic media to provide qualified transportation fringes under Internal Revenue Code §§ 132(a)(5) and 132(f). The ruling's effective date was set for January 1, 2008. In 2007, however, Treasury and the IRS became aware that certain transit systems needed additional time to modify their technology and make it compatible with the requirements for vouchers set forth in Revenue Ruling 2006-57. Consequently, Treasury and the IRS delayed the effective date of Revenue Ruling 2006-57 until January 1, 2009. See Notice 2007-76, 2007-2 C.B. 735. In 2008, Treasury and the IRS further delayed the effective date of Revenue Ruling 2006-57 until January 1, 2010. See Notice 2008-74, 2008-38 I.R.B. 718. And, in 2009, Treasury and the IRS delayed the effective date of Revenue Ruling 2006-57 until January 1, 2011. See Notice 2009-95, 2009-52 I.R.B. 968. Certain transit systems need additional time to complete the process of adapting their technology to achieve compatibility with the requirements for vouchers. Therefore, the ruling's effective date is further delayed until January 1, 2012. Nevertheless, employers and employees may rely on Revenue Ruling 2006-57 with respect to transactions occurring prior to January 1, 2012.

The principal author of this notice is Syd Gernstein of the Office of

Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice, contact Syd Gernstein at (202) 622-6040 (not a toll-free call).

## Rev. Proc. 2010-52

### SECTION 1. PURPOSE

This revenue procedure describes the procedure by which the plan sponsor of a multiemployer pension plan may request and obtain approval of an extension of an amortization period in accordance with § 431(d) of the Internal Revenue Code of 1986 (Code).

### SECTION 2. BACKGROUND INFORMATION

.01 *Section 431(d)*.—Section 431(d) was added to the Code as part of a significant revision of the funding rules for pension plans qualified under § 401(a) made by the Pension Protection Act of 2006 (PPA). Parallel provisions to § 431(d) can be found at § 304(d) of the Employee Retirement Income Security Act of 1974 (ERISA). The Secretary of the Treasury has interpretive and enforcement jurisdiction over both provisions.

Section 431(d)(1) provides that if the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the amortization period for any unfunded liability described in § 431(b)(2)(B) or 431(b)(4) (referred to in this revenue procedure as a “charge base”), and includes the certification by the plan's actuary described in § 431(d)(1)(B), the Secretary shall extend the amortization period for the period (not in excess of five years) requested in the application. An extension under § 431(d)(1) is referred to as an automatic extension. In addition, § 431(d)(2)(A) provides that the plan sponsor of a multiemployer plan may submit an application for an extension of the amortization period for any such charge base, and the Secretary may extend the amortization period for a period of time not in excess of 10 years less the number of years of any automatic extension with respect to such charge base, if the Secretary makes the determination

described in § 431(d)(2)(B). An extension under § 431(d)(2) is referred to as an alternative extension. Section 431(d)(3) requires that an applicant provide notice of the extension application to each affected party described in § 4001(a)(21) of ERISA.

.02 *Rev. Proc. 2008-67*.—Rev. Proc. 2008-67, 2008-2 C.B. 1211, provided the procedure for submitting an application for a ruling on an amortization extension with respect to plan years starting after December 31, 2007. This revenue procedure differs from Rev. Proc. 2008-67 in a number of ways. The major differences include: modifications to the list of affected parties to whom notification must be made (adding the Pension Benefit Guaranty Corporation (PBGC) and removing contributing employers); extension of the period for submission of an application; and modification of the treatment of automatic extension applications for purposes of certifying a plan's status under § 432(b)(3) of the Code. This revenue procedure also clarifies certain other aspects of Rev. Proc. 2008-67. In addition, the model notice in this revenue procedure now includes a plain language explanation section and a Comment and IRS Acknowledgement Sheet.

.03 *Section 431(b)(8)*.—Section 211(a)(2) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Pub. L. No. 111-192, added § 431(b)(8) to the Code. Section 431(b)(8)(A) provides a special amortization rule for certain net investment losses in the case of a multiemployer plan that meets a solvency test. The special rule applies to the portion of the plan's experience loss or gain for a plan year attributable to net investment losses (if any) incurred in either or both of the first two plan years ending after August 31, 2008 (an eligible loss year). This portion of the experience loss or gain may be treated as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over the period beginning with the plan year in which such portion is first recognized in the actuarial value of assets and ending with the last plan year in the 30-plan-year period beginning with the eligible loss year. Under § 431(b)(8)(A)(ii)(I), the amortization period under the special amortization rule

cannot be further extended under § 431(d). In addition, under § 431(b)(8)(A)(ii)(II), if an extension of an amortization period was granted under § 431(d) for any plan year before a decision to apply the special amortization rule for the plan year, that extension cannot result in the amortization period under the special amortization rule exceeding 30 years.

### SECTION 3. APPLICATIONS TO EXTEND AN AMORTIZATION PERIOD — IN GENERAL

.01 *Who may submit.*—An application for approval to extend the period of years required to amortize any unfunded liability must be submitted by the plan sponsor (*i.e.*, the board of trustees of the plan, and referred to in this revenue procedure as the applicant or Board) or by an authorized representative of the applicant. The application must be signed by an authorized trustee who is a current member of the Board or by an authorized representative of the applicant who either must be identified in (a), (b), or (c) of subsection 9.02(11) of Rev. Proc. 2010–4, 2010–1 I.R.B. 122, or must be an enrolled actuary within the meaning of § 7701(a)(35). Where an authorized representative signs the application or will appear before the Service in connection with the application, a Form 2848, *Power of Attorney and Declaration of Representative*, must be submitted with the application. An individual is not an authorized representative of the applicant merely on account of being an administrator or trustee of the plan.

.02 *Submission.*—An application must be submitted to:

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

The user fee required by Rev. Proc. 2010–8, 2010–8 I.R.B. 234, must be sent with such an application.

.03 *Required Information.*—An application must contain the information required by § 4 and/or § 5 of this revenue procedure, as applicable. Applications must include the plan name, the plan spon-

sor's employer identification number, and the plan number. Applications must also include a statement that the notice required by § 3.05 of this revenue procedure has been provided, a description of the method of delivery used to satisfy the notice requirement, and a copy of the notice.

.04 *Necessary Procedural Documents.*—An application will not be considered unless it complies with (1) and (2) below.

(1) The application must contain a declaration in the following form: “Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and, to the best of my knowledge and belief, the request or the modification contains all the relevant facts relating to the request or the modification, and such facts are true, correct, and complete.” This declaration must be signed by an authorized trustee who is a current member of the Board. The signature of an individual with a power of attorney will not suffice for the declaration. See § 9.02(13) of Rev. Proc. 2010–4.

(2) Because the application constitutes a request for a ruling, compliance with § 6110 is also required. Section 601.201 of the Statement of Procedural Rules sets forth the requirements applicable to requests for rulings and determination letters which are subject to § 6110. Section 601.201(e) furnishes specific instructions to applicants.

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

.05 *Notification.*—Within 14 days prior to the date of an application, the applicant must provide a copy of a written notice to each affected party (within the meaning of § 4001(a)(21) of ERISA) stating that an application for an extension of the amortization period under § 431(d) is being submitted to the Service. This includes each employee organization representing employees covered by the plan, each participant, beneficiary, and alternate payee (within the meaning of § 414(p)(8)) of the Code), and the PBGC. The original of the notice must bear a signature by an authorized trustee who is a current member of

the applicant's Board and must be in substantially the form set forth in the Model Notice found in Appendix A to this revenue procedure. The Service does not require the applicant to furnish any information to affected parties in addition to that required by the Model Notice in Appendix A as part of the extension application process, but additional information may be provided by the applicant pursuant to the collective bargaining process or otherwise.

The notice must be hand-delivered or mailed to the last known address of each employee organization, participant, beneficiary, and alternate payee. Alternatively, the notice may be delivered electronically in accordance with the requirements of § 1.401(a)–21 of the Income Tax Regulations. Merely posting the notice on a bulletin board is not sufficient to satisfy this notice requirement. If the applicant makes a reasonable effort to carry out the provisions of this paragraph, then failure of an employee organization, participant, beneficiary, or alternate payee to receive the notice will not cause the applicant to fail the notice requirement.

Notice to the PBGC may be submitted electronically to *MultiemployerProgram@pbgc.gov* or may be sent to the following address:

Pension Benefit Guaranty Corporation  
Attn: Multiemployer Program Division  
1200 K Street, N.W.  
Washington, D.C. 20005–4026

.06 *Providing Information.*—Employers who have difficulty in furnishing the information specified in this revenue procedure may call the Employee Plans Customer Assistance Service at 1–877–829–5500 (a toll-free number), or write for guidance to the following address:

Internal Revenue Service  
Commissioner, TE/GE  
Attention: SE:T:EP:RA:T:A2  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

In appropriate instances, pre-submission conferences may be afforded in addition to conferences available under Rev. Proc. 2010–8.

.07 *Coordination of Extension Applications.*—The total length of an amortization period extension permitted under

paragraphs (1) and (2) of § 431(d) of the Code for a charge base is limited to 10 years. Section 4 of this revenue procedure relates to automatic extensions under § 431(d)(1). Section 5 of this revenue procedure relates to alternative extensions under § 431(d)(2). An automatic extension for a charge base may not exceed five years. An alternative extension for a charge base may be for up to 10 years less any automatic extension approved for that charge base. An applicant requesting both types of extension may do so in a single application. However, such an application must include the information specified in § 4.01 below (including the actuarial certification described in § 4.01(4)), the information specified in § 5.01 below, and a completed copy of the checklist that appears as Appendix B of this revenue procedure. Such a combined application will be considered a single ruling request. If the applicant requests both types of extension in a single application, the Service may approve the automatic extension without approving the alternative extension.

*.08 Modification of Existing Extension.*—If a plan has already received under § 431(d), or under § 412(e) as in effect before the effective date of PPA, an extension for less than 10 years of the amortization period on any charge base, an application for an alternative extension may be submitted modifying the extension on such charge base to a total of 10 years (taken together with the original extension). Even if the original extension was for less than five years, no such modification of an extension may be requested as an automatic extension.

*.09 Interim Effect of Application.*—Whether the Service has ruled on an application does not affect the 90-day deadline for certification of a multiemployer plan's status under § 432(b)(3) of the Code. In making this certification, if the plan has submitted an application for an automatic extension under § 431(d)(1) and the Service has not yet ruled on the application, the actuary must treat the application as approved. However, for certifications made before January 1, 2011, the actuary may, but is not required to, treat as approved an application for an automatic extension on which the Service has not yet ruled. The provisions in the preceding two sentences do not apply if the application was submitted after the deadline specified

in Section 6, or if the actuary has reason to believe that the standards of this revenue procedure have not been met for the application submitted.

#### SECTION 4. APPLICATION FOR AUTOMATIC EXTENSION

*.01 Information to be provided.*—An applicant for an automatic extension must furnish the following information:

(1) A list of the charge bases for which an extension of the amortization periods is requested.

(2) The length of the extension of the amortization period being requested for each of the charge bases listed in (1) above (up to a maximum of five years). No extension will be granted with respect to an amortization period for net investment losses described under § 431(b)(8)(A)(i).

(3) Whether a prior application for an automatic or alternative amortization extension under § 431(d), or amortization extension under § 412(e) as in effect before the effective date of PPA, was or was not approved with respect to any of the charge bases for which an extension is requested, including, if approved, the length of the extension, and, if denied, the reason for the denial and an explanation of why the reason for the denial no longer applies.

(4) A certification by the plan's actuary that, based on reasonable assumptions:

1. Absent the extension for which the plan is applying, the plan would have an accumulated funding deficiency in the current plan year or any of the nine succeeding plan years,

2. The plan sponsor has adopted a plan to improve the plan's funding status,

3. The plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

4. The notice required under § 431(d)(3)(A) has been provided, in accordance with § 3.05 of this revenue procedure.

*.02 Ruling.*—Upon receipt of the application with the necessary information, and verification that the criteria stated above have been met, the Secretary shall issue a statement to the applicant providing approval for the requested extension.

*.03 Applicable Period.*—The procedures of this § 4 shall not apply with respect to any application submitted after

December 31, 2014, in accordance with § 431(d)(1)(C).

#### SECTION 5. APPLICATION FOR ALTERNATIVE EXTENSION

*.01 Information to be provided.*—An applicant for an alternative extension must furnish appropriate evidence that the extension of the amortization period would carry out the purposes of ERISA and PPA and would provide adequate protection for participants and their beneficiaries, and that the failure to permit the extension would (I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and (II) be adverse to the interests of plan participants in the aggregate. What constitutes appropriate evidence will depend on the facts and circumstances of each case. A response must be furnished for each of paragraphs (1) through (5) below. In certain cases, some of the material described in paragraphs (1) through (5) may be inapplicable, unavailable, inappropriate, or burdensome to furnish. In such cases, the applicant must furnish a statement indicating why the material for a particular paragraph is inapplicable, unavailable, inappropriate, or burdensome.

(1) *General facts concerning the participating employers.*

A brief statement should be submitted concerning: (a) the history of the contributing employers and the industry or industries covered by the plan; (b) the ownership of the principal employers (as identified below) and any recent or contemplated changes (such as acquisitions, mergers, or discontinuances of operations) which might have a bearing on the employers' organizations or general financial condition; (c) any recently withdrawn principal employers with the applicable withdrawal liability amounts and dates; and (d) a general description of the financial state of the industry in which employees covered by the plan are employed.

(2) *The financial condition of the principal employers.*

For purposes of this revenue procedure, the principal employers are those employers who (1) are directly represented on the applicant board of trustees, (2) made five percent or more of the total contributions

to the plan during the preceding plan year, or (3) for the current plan year, are required to make five percent or more of the total required contributions under the collective bargaining agreements relating to the plan for which the extension is requested. Each of the principal employers must submit the latest available annual financial report of the employer and each of the other entities included within the controlled group of which the employer is a member. This submission must include at least the balance sheet, profit and loss statement, cash flow statement, and notes to the financial statement. Recent interim financial reports for each of the controlled group members, if available, must also be submitted along with an interim financial report covering the corresponding period for the previous year. If the employer submits financial reports to the Securities and Exchange Commission, these reports must be submitted for the same period as the annual financial report. Preferably, the financial report should include certified financial statements. If certified financial statements have not been prepared, an uncertified report is acceptable. If neither certified nor uncertified reports are available, a copy of the company's latest available federal income tax return, including all of the supporting schedules, must be submitted. The required financial information of the principal employers should be submitted directly from each employer to the Service at the following address, at the same time that the application is made:

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

*(3) Information concerning the extension of the amortization period.*

Information concerning the extension of the amortization period must include the following.

1. A list of the charge bases for which the extension is requested, the amount of each such base, and the number of years remaining in the amortization period for the charge base. A favorable ruling will not be granted on an application with respect

to which the total amount subject to the requested extension is not yet established.

2. The reasons why an extension of the amortization period is needed.

3. The length of the extension of the amortization period desired (up to a maximum of 10 years less any automatic or previously approved alternative extension). No extension will be granted with respect to an amortization period for net investment losses described under § 431(b)(8)(A)(i).

4. Whether a prior application for an automatic or alternative amortization extension under § 431(d), or amortization extension under § 412(e) as in effect before the effective date of PPA, was or was not approved with respect to any of the charge bases for which an extension is requested, including, if approved, the length of the extension, and, if denied, the reason for the denial and an explanation of why the reason for the denial no longer applies.

5. Information concerning the actions taken by the applicant, before the application for an extension has been made, to reduce the plan's unfunded liability. Such actions would include the reduction of future plan benefit accruals and increases in employer contribution rates. Also describe any benefit reductions, contribution rate increases, or other actions that are intended to be taken in the future.

6. Projections of (i) funding standard account credit balance/accumulated funding deficiencies, (ii) actuarial value of assets and market value of assets, (iii) current liabilities, and (iv) funding ratios (determined in accordance with § 432(i)) for the length of the extension of the amortization period requested and for the period 10 years afterwards. For example, if the applicant requests an extension of 10 years (including a five-year automatic extension), the projections must be for a 20-year period. These projections must be prepared by an enrolled actuary.

7. The first plan year for which the extension would apply, *i.e.*, the first plan year for which the extension of the amortization period will be reflected in the determination of the minimum funding standard for the plan (*e.g.*, 1/1/2011–12/31/2011).

The Service may request additional information as needed.

*(4) Facts concerning the pension plan.*

For each pension plan for which an extension is requested, the following information must be supplied.

1. The date the plan was adopted.

2. The effective date of the plan.

3. The classes of employees covered.

4. The number of active participants and the number of total participants.

5. A copy of the current plan document and the most recent summary plan description.

6. A copy of the most recent determination letter issued to the plan.

7. A brief description of all plan amendments adopted during the first plan year for which the extension would apply and the previous four years which affect plan costs, including the approximate effect of each amendment on such costs.

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

9. A description of how the plan is funded (*i.e.*, trust fund, individual insurance policies, etc.).

10. A list of the contributions actually paid to the plan in each month, from the twenty-fourth month prior to the beginning of the first plan year for which the extension would apply through the date of the application (including the plan year to which each of the contributions was applied), with the employee contributions and the employer contributions listed separately.

11. The approximate contribution required to meet the minimum funding standard for the first plan year for which the extension would apply. This amount must be determined by the plan's enrolled actuary.

12. A copy of the most recently completed *Annual Return/Report of Employee Benefit Plan* (Form 5500 series, as applicable) and a copy of the corresponding Actuarial Information schedule (Schedule MB).

13. A copy of each ruling letter for the plan that waived the plan's minimum funding standard during the last 15 plan years, a statement of the amount waived for each plan year, and a statement of the outstanding balance of the amortization base for each waived funding deficiency. The out-

standing balance of the amortization base for each waiver is to be calculated as of the first day of the first plan year for which an extension would apply.

14. A copy of each ruling letter for the plan that granted under § 431(d), or under § 412(e) of the Code as in effect before the effective date of the PPA, an extension of time to amortize any unfunded liability which became applicable at any time.

15. A copy of the certification of whether or not the plan is in critical status or endangered status, in accordance with the requirements of § 432(b)(3), for the first plan year for which the extension would apply.

16. A copy of any funding improvement plan or rehabilitation plan to which the plan is currently subject in accordance with § 432, or to which the plan has been subject at any time within the 10 years preceding the date of the application and all updates to the funding improvement plan or rehabilitation plan.

(5) *Other information.*

1. Describe the nature of any matters pertaining to the plan which are currently pending with, or are intended to be submitted to, the Service, the Department of Labor, or the PBGC.

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

.02 *Checklist.*—A checklist has been provided in Appendix B for the use of an applicant submitting an application for an alternative extension. The checklist must be signed and dated by the applicant or authorized representative and placed on top of the application.

## SECTION 6. DEADLINE FOR REQUESTING AN EXTENSION

All extension applications must be submitted by the 15<sup>th</sup> day of the third calendar month following the last day of the first plan year for which the extension is intended to take effect. The Service will consider applications for extensions submitted after this date only upon a showing of good cause. In seeking an alternative extension of an amortization period with respect to a plan year which has not yet ended, the applicant may have difficulty in furnish-

ing sufficient current information in support of the application. For this reason, it is generally advised that an application not be submitted earlier than 90 days prior to the end of the plan year for which the extension is requested. This 90-day period does not apply to applications for an automatic extension. Section 431(d)(2)(C) of the Code requires that the Service act on an application for an alternative extension within 180 days of receiving the application. An application will not be considered received until the applicable information required by §§ 4.01, 5.01, and 5.02 of this revenue procedure has been received. The Service will provide notification to the applicant of the date upon which it has full receipt of all required information. The Service will close, without issuing a ruling, the file on a submission for which not all of the required documentation is provided in a timely manner.

## SECTION 7. BANKRUPTCY PETITIONS

If a significant number of contributing employers or any of the principal employers file a bankruptcy petition after the application for an extension of an amortization period is submitted to the Service, the applicant must provide to the Service an update to the information required to be submitted in § 5 of this revenue procedure, especially the financial information in §§ 5.01(2) and 5.01(3).

## SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for all ruling requests submitted on or after January 1, 2011. Ruling requests submitted before January 1, 2011, may use this revenue procedure or Rev. Proc. 2008-67.

## SECTION 9. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2010-4, 2010-1 I.R.B. 122, is modified to the extent that this revenue procedure provides special procedures for issuing rulings with respect to applications for an extension of an amortization period.

Rev. Proc. 2008-67 is superseded effective for applications submitted on or after January 1, 2011.

## SECTION 10. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1890.

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

The collection of information in this revenue procedure is in §§ 3, 4 and 5, and Appendix B. This collection of information is required to evaluate, process, and obtain approval of the application for an extension of an amortization period. This information will be used to make determinations on extensions of the amortization period under § 431(d). The likely respondents are businesses or other for-profit institutions and nonprofit institutions.

The estimated total annual reporting/recordkeeping burden is 2,500 hours.

The estimated annual burden per respondent/recordkeeper varies from 71 to 129 hours, depending on individual circumstances, with an estimated average burden of 100 hours. The estimated number of respondents/recordkeepers is 25.

The estimated annual frequency of responses is one.

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

## DRAFTING INFORMATION

The principal author of this revenue procedure is Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. Questions about this revenue procedure and its application may be directed by email to [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov).

## APPENDIX A: Model Notice

### Notice of Application For Amortization Extension Plan: [INSERT PLAN NAME]

#### Part I. Plain Language Explanation

This notice is to inform you that the [Insert plan name] is requesting a ruling from the IRS to extend certain amortization period(s).

*Why is the pension plan sending you this notice?* Pension plans are required by law to send out notices to affected parties when certain events happen, such as when the plan requests a ruling from the IRS for certain purposes.

*What the notice does:* The notice alerts you to a ruling the pension plan is requesting from the IRS. **You are not required to take any action at all.** The reason for the notice is to tell you about an action being taken by the pension plan, and to inform you that you have a right to comment on the ruling the plan is requesting from the IRS. If you wish, you may comment to the IRS on the ruling request, in accordance with the terms stated in Technical Provisions, Part II below. Or, if you wish, you may take no action at all. Also, Information about Funded Status of Plan, Part III, explains how you may obtain more information regarding the plan from the plan administrator, or from the Department of Labor.

*What kind of ruling is the plan requesting?* The plan's participating employers are required to pay sufficient contributions to the retirement fund, over a specified period of years, to bring the level of funding equal to the plan's long term obligations. The ruling request is to extend the period of years required to fund the obligations.

*What the notice does not do:* This notice does not obligate you to do anything. It gives you an opportunity to comment if you wish. This notice does not enable the IRS to explain your benefits, or to adjust them in any way. The IRS does not maintain data about your benefits under the plan. If you wish to obtain information about your benefits, you should ask the plan administrator. The notice does not allow the IRS to give you information about a requested ruling. Disclosure laws prohibit the IRS from giving out such information. However, see Information about Funded Status of Plan, Part III below, for an explanation of your right under § 101(k) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), to request information from the plan administrator that is relevant to the amortization extension application.

*What the requested ruling would not do:* The ruling the pension plan is requesting would not change your accrued benefit. If the IRS were eventually to decide in favor of the requested ruling, the ruling would neither reduce your accrued benefit nor eliminate the obligation of the contributing employers to continue to fund benefits. If the ruling request is approved by the IRS, your pension plan remains obligated to pay your benefits as determined under the plan documents.

#### Part II. Technical Provisions

This notice is to inform you that an application for an extension of an amortization period for unfunded liability under § 431(d) of the Internal Revenue Code (Code) and § 304(d) of ERISA will be submitted by [INSERT APPLICANT'S NAME] to the Internal Revenue Service (IRS) for the [INSERT PLAN NAME] for the plan year beginning [INSERT DATE].

The IRS will grant an automatic extension if the plan's actuary certifies that the plan's funded status meets certain standards described in § 431(d)(1) of the Code. The IRS may also grant an alternative extension if it determines (A) that the extension would carry out the purposes of ERISA and the Pension Protection Act of 2006 and would provide adequate protection for participants, and (B) that failure to permit the extension would result in substantial risk to the continuation of the plan, and would be adverse to the interests of the plan participants in the aggregate. The plan is applying for (check one or both, as appropriate):

\_\_\_\_\_ an automatic extension, and/or

\_\_\_\_\_ an alternative extension.

The IRS has received a copy of this notice. The IRS will consider any relevant information that it receives concerning the application for an extension. Any additional information that you may have should be submitted using the attached Comment and IRS Acknowledgment Sheet. You may send this information to the following address:

Director, Employee Plans  
Internal Revenue Service  
Attn: SE:T:EP:RA:T:A2  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

If you intend to submit comments, any such information should be submitted as soon as possible after you receive this notice. Due to the disclosure restrictions of § 6103 of the Code, the IRS cannot provide any information with respect to the extension application itself. In particular, the IRS cannot disclose that it has received such a ruling request. As a result, the only response the IRS can make to any information you send is an acknowledgement that it has received your comments. Therefore, the IRS will respond to your letter only if you include a completed acknowledgement sheet as given below in Part IV of this notice.

**Part III. Information about Funded Status of Plan**

As required by § 104(b)(2) and (4) of ERISA, the plan administrator must furnish a copy of the latest annual plan report upon written request and make the annual report available for inspection at its principal office, which is located at [INSERT ADDRESS]. Under § 101(k)(1) of ERISA, any application for an extension of the amortization period under § 304(d) of ERISA or § 431(d) of the Code (including the application for extension described in this notice) and the determination made by the IRS with respect to such application may be obtained upon request by writing to the plan administrator at the above address. Such documents must be furnished by the plan administrator no later than 30 days after receipt of the written request. Section 502(c)(4) of ERISA grants the Department of Labor the authority to assess civil penalties not to exceed \$1,000 per day for each violation of § 101(k).

*[Instruction: If the plan administrator makes a reasonable charge to cover copying, mailing, and other costs of furnishing copies permitted under § 101(k) of ERISA, the amount of such charge should be stated in the notice.]*

In accordance with § 104 of ERISA, annual financial reports for this plan, which include employer contributions made to the plan for any plan year, are available for inspection at the Department of Labor in Washington, D.C. Copies of such reports may be obtained upon request and upon payment of copying costs from the following address:

Public Disclosure Room  
Room N-1513  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

For 2009 and subsequent plan years, you may obtain an electronic copy of the plan’s annual report at [www.efast.dol.gov](http://www.efast.dol.gov) and accessing the Form 5500 search function.

The following information is provided pursuant to § 304(d)(3) of ERISA and § 431(d)(3) of the Code:

Present value of accrued benefits \$\_\_\_\_\_

Present value of benefits that are guaranteed by the PBGC, calculated as though the plan terminated  
\$\_\_\_\_\_

Fair market value of plan assets \$\_\_\_\_\_

The above calculations were as of [INSERT DATE]. The above present values were calculated using an interest rate or rates of [INSERT INTEREST RATE(S)].

[SIGNATURE OF AUTHORIZED TRUSTEE OF THE APPLICANT BOARD]  
[INSERT NAME]  
[INSERT TITLE]

**Part IV. Response to Comments**

**Comment and IRS Acknowledgement Sheet**

For Comments on Application for Amortization Extension

If you send any comments about the application for an amortization extension, including whether the plan meets the criteria stated in Part II above, you should provide your name and address below and include this acknowledgement sheet with your comments. The IRS will complete the acknowledgment below, and return it to you. Since the IRS cannot disclose to you any information about any other taxpayer, the IRS cannot tell you anything about any plan's request for a ruling. Therefore, this acknowledgement sheet will constitute the only response the IRS will make to your comments.

1. *To be completed by the person submitting comments to the IRS:*

Submitter's Name and Address:

Plan with respect to which you are making comments:

[INSERT PLAN NAME]

2. *To be completed by IRS:*

Date your comments were received:

Signature:

Director, Employee Plans

**APPENDIX B. APPLICATION FOR ALTERNATIVE EXTENSION OF AN AMORTIZATION PERIOD CHECKLIST  
IS YOUR SUBMISSION COMPLETE?**

Instructions

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

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

\_\_\_\_\_ 1. If you want to designate an authorized representative, have you included a properly executed Form 2848 (*Power of Attorney and Declaration of Representative*)?

\_\_\_\_\_ 2. Have you satisfied all the requirements of Rev. Proc. 2010-4 (especially concerning signatures and penalties of perjury statement)? (See § 3.04(1))

\_\_\_\_\_ 3. Have you included a statement of proposed deletions? (See § 3.04(2))

\_\_\_\_\_ 4. Have you included the user fee required under Rev. Proc. 2010-8? (See § 3.02)

\_\_\_\_\_ 5. Have you included a copy of the written notice that an application for an extension of an amortization period is being submitted, a statement that such notice was delivered to each affected party, and a description of the method used to satisfy the notice requirement? (See § 3.03 and Appendix A)

\_\_\_\_\_ 6. Have you included the general facts concerning the participating employers? (See § 5.01(1))

\_\_\_\_\_ 7. Have you included a description of the industry's financial state? (See § 5.01(1))

\_\_\_\_\_ 8. Have you included information concerning the extension of the amortization period, including coordination with any extension under § 431(b)(8)(A)(i) of the Code ? (See § 5.01(3))

\_\_\_\_\_ 9. Have you included information concerning the pension plan? (See § 5.01(4))

\_\_\_\_\_ 10. Have you included information concerning other matters pertaining to the plan? (See § 5.01(5))

\_\_\_\_\_  
Signature  
Typed or printed name of person signing checklist  
Title or Authority

\_\_\_\_\_  
Date

## Part IV. Items of General Interest

### Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

#### Announcement 2010–94

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on December 27, 2010, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Armenian Relief Society of Texas  
Richmond, TX  
Mexican American Research Center, Inc.  
Austin, TX

Panhandle Land Conservancy, Inc.  
Destin, FL

### Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts; Correction

#### Announcement 2010–95

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (T.D. 9340, 2007–2 C.B. 487 ) that were published in the **Federal Register** on Thursday, July 26, 2007 (72 FR 41128) providing updated guidance on section 403(b) contracts of public schools and tax-exempt organizations described in section 501(c)(3). These regulations will affect sponsors of section 403(b) contracts, administrators, participants, and beneficiaries.

DATES: The correction is effective October 26, 2010, and is applicable on July 26, 2007.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, John Tolleris at (202) 622–6060; concerning the regulations as applied to church-related entities, Sherri Edelman or Jason Levine at (202) 283–9634 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

#### Background

The final regulations that are the subject of this correction are under section 403(b) of the Internal Revenue Code.

#### Need for Correction

As published, final regulations (T.D. 9340) contain an error that may prove to be misleading and is in need of clarification.

#### Correction of Publication

Accordingly, the publication of the final regulations (T.D. 9340), which was the subject of FR Doc. 07–3649, is corrected as follows:

On page 41138, column 2, in the preamble, under footnote number 11, line 26, the language “Rev. Rul. 66–254, 1966–2 C.B. 125” is removed.

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

(Filed by the Office of the Federal Register on October 25, 2010, 8:45 a.m., and published in the issue of the Federal Register for October 26, 2010, 75 FR. 65567)

### Form 1040, Form 1040A, Form 1040EZ, and Form 1041 Electronic Filing Hardship Waiver Request Procedures for Calendar Year 2011

#### Announcement 2010–96

This announcement applies to tax return preparers who are required by law to electronically file certain returns. On December 3, 2010, proposed regulations were published in the Federal Register (75 FR 75439), which would implement the statutory requirement under section 6011(e)(3) of the Internal Revenue Code for specified tax return preparers to file income tax returns using magnetic media (electronically) for individuals, estates, and trusts if the specified tax return preparers prepare and file the returns. Notice 2010–85, a notice of a proposed revenue procedure published in the Internal Revenue Bulletin (I.R.B. 2010–51) on December 20, 2010, provides, for calendar year 2011, that tax return preparers who meet the definition of a “specified tax return preparer” and who believe they may qualify for an undue hardship waiver may voluntarily submit waiver requests to the IRS prior to publication of a final revenue procedure. Form 8944, *Preparer e-file Hardship Waiver Request*, is now available

on-line and must be used to voluntarily request waivers for calendar year 2011. You can get Form 8944 on-line at [www.irs.gov](http://www.irs.gov). Form 8944 may also be ordered by calling 1-800-TAX-FORM (1-800-829-3676), the toll-free IRS number for ordering forms. Forms ordered through the toll-free number will be mailed to you.

Specified tax return preparers may submit completed Forms 8944 on or after the date of the publication of this announcement. Specified tax return preparers are encouraged to submit undue hardship waiver requests using Form 8944 as soon as possible to allow sufficient time for the IRS to review the requests and provide notification of approval or denial of the requests. For calendar year 2011, Forms 8944 must be submitted to the IRS address

or facsimile number (but not both) listed below, no later than April 1, 2011. Forms 8944 submitted after that date will only be reviewed under limited circumstances, as further explained in the instructions to Form 8944. A specified tax return preparer may mail his or her completed Form 8944 and any required attachments to:

Internal Revenue Service  
Attn: EFU Waiver  
P.O. Box 4099  
Stop 983  
Woburn, MA 01888-4099

Alternatively, a specified tax return preparer may send his or her completed Form 8944 and any required attachments to the IRS via facsimile to 1-877-477-0567 (a

toll-free number). Allow four to six weeks to receive notification of approval or denial of the waiver request. However, the approval or denial of waiver requests is contingent upon and will not occur prior to the publication of final regulations and a final revenue procedure.

For questions about completing Form 8944, or to check on the status of a hardship waiver request that has been submitted and remains outstanding for at least four weeks, call the IRS at 1-866-255-0654 (a toll-free number). The principal author of this announcement is Keith Brau of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this announcement, contact Keith Brau at (202) 622-4940 (not a toll-free number).

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.

ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.

PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
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