

Section 1502.—Regulations

26 CFR 1.1502–13: Intercompany transactions.

T.D. 9264

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

Guidance Necessary to Facilitate Business Electronic Filing and Burden Reduction

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Final and temporary regulations.

SUMMARY: These regulations affect taxpayers that file Federal income tax returns. They simplify, clarify, or eliminate reporting burdens and also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. The text of the temporary regulations also serves as the text of the proposed regulations (REG–134317–05) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on May 30, 2006.

Applicability Date: For dates of applicability, see §§1.302–2T(d), 1.302–4T(h), 1.331–1T(f), 1.332–6T(e), 1.338–10T(c), 1.351–3T(f), 1.355–5T(e), 1.368–3T(e), 1.381(b)–1T(e), 1.382–8T(j)(4), 1.382–11T(b), 1.1081–11T(f), 1.1221–2T(j), 1.1502–13T(m), 1.1502–31T(j), 1.1502–32T(j), 1.1502–33T(k), 1.1502–35T(k), 1.1502–76T(d), 1.1502–95T(g), 1.1563–1T(e), 1.1563–3T(e) and 1.6012–2T(k). The applicability of these regulations will expire on May 26, 2009.

FOR FURTHER INFORMATION CONTACT: Grid Glycer, (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public pro-

cedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–2019. Responses to this collection of information are mandatory.

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

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in this issue of the Bulletin.

Books and 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

This Treasury Decision amends Treasury regulations under sections 279, 302, 331, 332, 338, 351, 355, 368, 381, 382, 1081, 1221, 1502, 1563, and 6012 of the Internal Revenue Code (Code) that require taxpayers to include a statement on or with their Federal income tax returns. In some cases, these statements are the method by which taxpayers elect (or elect out of) a particular income tax treatment. In other cases, these statements are the method by which taxpayers report that they undertook a particular type of transaction. In both cases, these regulations often require taxpayers to include detailed amounts of information in these statements, or do not clearly specify the required information.

In addition, many of these regulations present impediments that prevent corporate taxpayers from submitting these statements as part of an electronically filed Federal income tax return (e-filing). Some of these regulations, for example, impede e-filing by requiring taxpayers to sign a statement and include it on or with the tax-

payer's income tax return. Others require a taxpayer to include third-party signatures on such statements or require taxpayers to attach documents, or information supplied by a third party.

Explanation of Provisions

1. Reporting Requirements That Were Simplified, Clarified, or Eliminated

A. Regulations for which the reporting requirements were simplified or clarified

Some regulations require a taxpayer to include a statement on or with its return if it undertakes certain types of transactions. In some cases, these regulations require the taxpayer to submit detailed information about the particular transaction with its return. In other cases, the scope of the reporting requirement was unclear. The IRS and Treasury Department believe that it is not useful to require taxpayers to attach all of this information to their returns. Accordingly, these regulations simplify and clarify the reporting requirements under several provisions.

B. Regulations for which the reporting requirements were eliminated

Some regulations require that all shareholders and security holders that receive stock or securities in certain distributions or exchanges file statements providing information about that distribution or exchange. See, e.g., §§1.355–5(b) and 1.368–3(b). The IRS and Treasury Department have determined that for most shareholders and security holders these statements are no longer necessary. Accordingly, these temporary regulations only require that a “significant holder” file such statement. In the case of stock, a significant holder is a holder of stock of a corporation if at the time of the distribution or exchange such holder owns at least: (1) 5% (by vote or value) of the total outstanding stock of such corporation if the stock owned by such holder is publicly traded, or (2) 1% (by vote or value) of the total outstanding stock of such corporation if the stock owned by such holder is not publicly traded. See, e.g., §§1.355–5T(b) and 1.368–3T(b). These regulations use the definition of publicly traded stock found elsewhere in the regulations. See,

e.g., §§1.1092(d)-1(b), 1.1273-2(f) and 54.4975-7(b)(1)(iv).

In the case of securities, a significant holder is a holder of securities of a corporation if at the time of the distribution or exchange such holder owns securities with a basis of \$1,000,000 or more.

2. Regulations That Present Impediments to E-filing

As described in this preamble in paragraphs 2.A. and 2.B., certain regulations impose reporting requirements that are impediments to e-filing. The IRS and Treasury Department are issuing these temporary regulations to eliminate such impediments without altering the substantive requirements of the current regulations.

A. Statements required to be signed by the taxpayer

Some regulations require a taxpayer to include a statement on or with its return in order to make an election, or notify the IRS that the taxpayer is undertaking a transaction authorized by that provision. In the case of elections, the current regulations often require the taxpayer to sign such statement. In these circumstances, the requirement that the taxpayer sign the statement is an impediment to e-filing and superfluous. By signing the return, a taxpayer is attesting to the validity of the Form 1120 as well as all of the attachments. Accordingly, for these types of statements, the underlying regulations are amended to eliminate the requirement that such statements be signed.

B. Statements required to be signed by both the taxpayer and a third party

Some regulations require that the taxpayer and another person sign a statement, and that the taxpayer include such jointly signed statement on or with its return. In some cases, the taxpayer is required to provide a copy of this statement, or other information, to the other person and that person is required to include such copy or information on or with its return.

These requirements are impediments to e-filing. However, in such cases, the joint signature requirement cannot simply be eliminated because, in the absence of that requirement, the taxpayer and the other person might take inconsistent positions.

Therefore, these regulations amend the provisions with a joint signature requirement to require the taxpayer and the other person to include a statement on or with its return indicating that it has entered into an agreement with the other party addressing the substantive matters covered by the statement required under the current regulations. These agreements will contain the same information as the jointly signed statements required by the current regulations. Each party will be required to retain either the original or a copy of this agreement as part of its records. See §1.6001-1(e).

C. Section 1561

Section 1561(a) provides that the component members of a controlled group of corporations are limited to using the amounts of the tax benefit items described therein in the same manner as if they were one corporation. Section 1561(a) generally provides that such amounts shall be divided equally among such members. However, section 1561(a) also provides that if such members adopt an apportionment plan, they are then permitted to allocate such amounts among themselves unequally. Section 1.1561-3(b) provides the mechanism by which such members may consent to an apportionment plan.

Section 1.1561-3(b) presents impediments to e-filing. However, the IRS and Treasury Department have determined that these impediments cannot be eliminated without also addressing certain substantive issues present in these regulations. Addressing these issues is beyond the scope of this project. Therefore, these issues will be addressed in separate guidance that the IRS and Treasury Department expect to publish later this year.

3. Requirement That Taxpayers Provide the Fair Market Value and Basis of Assets or Stock

Certain of these regulations require taxpayers to provide in their reporting statement the fair market value and basis of assets or stock distributed or exchanged in a transaction. The IRS and Treasury Department recognize that, in some cases, a taxpayer may not conveniently be able to provide a precise valuation of property exchanged or distributed in a transaction that is not taxable in the current year. In those

cases, for the purposes of these statements, the IRS and Treasury Department will accept a taxpayer's good faith estimate of such fair market value.

Similarly, the IRS and Treasury Department recognize that there are occasionally situations where a taxpayer may not be able to precisely determine its basis in a taxable year in which that basis would not be relevant to determining the taxpayer's taxable income. As in the case of fair market value, for purposes of these statements, the IRS and Treasury Department will in these situations accept a taxpayer's good faith estimate of such basis.

4. Election to Restore Value Under §1.382-8

In the case of a controlled group of corporations, §1.382-8 provides that, for purposes of determining the section 382 limitation, the value of the stock of each component member of the controlled group of which the loss corporation is a component member on the change date must be reduced by the value of the stock of any other component member that such component member directly owns immediately after an ownership change. However, the component member's value may be increased by the amount of value that such other component member elects to restore.

The IRS and Treasury Department are aware that taxpayers generally elect to restore value from component members that are foreign corporations. The IRS and Treasury Department are also aware that taxpayers occasionally fail to make the election timely and must file a request for relief under §301.9100-1. Therefore, to reduce unnecessary elections and section 9100 requests, §1.382-8T(h)(2) will deem foreign component members to elect to restore full value to other component members under §1.382-8. Nevertheless, should such members not wish to restore the full amount of such value, they may elect not to restore all or part of such value. Further, a foreign component member that has items treated as connected with the conduct of a trade or business in the United States that it takes into account in determining its value under section 382(e)(3) is not subject to this deemed election.

The IRS and Treasury Department request comments regarding the scope and

application of this deemed election to restore value.

5. Recordkeeping Requirement

The IRS and Treasury Department emphasize that although the amount of information that a taxpayer is required to include on or with its return has, in most cases, decreased, the taxpayer's recordkeeping requirement remains unchanged. Certain of these regulations illustrate the type of information taxpayers are recommended to keep in order to substantiate their reporting position.

6. Rev. Proc. 2006-21

Contemporaneously with the issuance of these temporary regulations, the IRS and Treasury Department are releasing Rev. Proc. 2006-21, 2006-24 I.R.B. 1050, to remove e-filing impediments and reduce reporting requirements currently found in Rev. Proc. 89-56, 1989-2 C.B. 643, Rev. Proc. 90-39, 1990-2 C.B. 365, and Rev. Proc. 2002-32, 2002-1 C.B. 959. Each revenue procedure provides a method for consolidated taxpayers to request a specified consent or waiver from the Commissioner without submitting a request for a private letter ruling. In particular, Rev. Proc. 89-56 permits taxpayers to request a consent to use a 52-53 week tax year, Rev. Proc. 90-39 permits taxpayers to request a consent to change the method for allocating tax liability to members for earnings and profits purposes, and Rev. Proc. 2002-32 permits taxpayers to request a waiver of the 60-month limitation on reconsolidation.

7. §1.1502-35

These regulations also include a revision to §1.1502-35 that is not related to electronic filing or reporting requirements. The revision corrects an error in the determination of the time period during which suspended losses are reduced under that section. Specifically, these regulations provide that this time period ends on the day before the first date on which the subsidiary (and any successor) is not a member of the group.

Special Analysis

It has been determined that this Treasury Decision is not a significant regula-

tory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Grid Glycer, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read, in part, as follows:

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

Section 1.338-10T also issued under 26 U.S.C. 338. * * *

Section 1.1221-2T also issued under 26 U.S.C. 1502. * * *

Section 1.1502-13T also issued under 26 U.S.C. 1502. * * *

Section 1.1502-31T also issued under 26 U.S.C. 1502. * * *

Section 1.1502-32T also issued under 26 U.S.C. 1502. * * *

Section 1.1502-33T also issued under 26 U.S.C. 1502. * * *

Section 1.1502-35T also issued under 26 U.S.C. 1502. * * *

Section 1.1502-76T also issued under 26 U.S.C. 1502. * * *

Section 1.1502-95T also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.279-5 is amended by removing paragraph (h).

Par. 3. Section 1.302-2 is amended by:

1. Redesignating paragraph (b) as paragraph (b)(1).

2. Revising newly designated paragraph (b)(1).

3. Adding paragraphs (b)(2) and (d).

The additions and revisions read as follows:

§1.302-2 Redemptions not taxable as dividends.

* * * * *

(b)(1) The question whether a distribution in redemption of stock of a shareholder is not essentially equivalent to a dividend under section 302(b)(1) depends upon the facts and circumstances of each case. One of the facts to be considered in making this determination is the constructive stock ownership of such shareholder under section 318(a). All distributions in *pro rata* redemptions of a part of the stock of a corporation generally will be treated as distributions under section 301 if the corporation has only one class of stock outstanding. However, for distributions in partial liquidation, see section 302(e). The redemption of all of one class of stock (except section 306 stock) either at one time or in a series of redemptions generally will be considered as a distribution under section 301 if all classes of stock outstanding at the time of the redemption are held in the same proportion. Distributions in redemption of stock may be treated as distributions under section 301 regardless of the provisions of the stock certificate and regardless of whether all stock being redeemed was acquired by the stockholders from whom the stock was redeemed by purchase or otherwise.

(2) [Reserved]. For further guidance, see §1.302-2T(b)(2).

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(d) [Reserved]. For further guidance, see §1.302-2T(d)(1).

Par. 4. Section 1.302-2T is added to read as follows:

§1.302-2T Redemptions not taxable as dividends (temporary).

(a) through (b)(1) [Reserved]. For further guidance, see §1.302-2(a) through (b)(1).

(2) Unless paragraph (d) of §1.331-1T applies, every significant holder that transfers stock to the issuing corporation in exchange for property from such corporation must include on or with such

holder's return for the taxable year of such exchange a statement entitled, "STATEMENT PURSUANT TO §1.302-2T(b)(2) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER OF THE STOCK OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ISSUING CORPORATION]." If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(i) The fair market value and basis of the stock transferred by the significant holder to the issuing corporation; and

(ii) A description of the property received by the significant holder from the issuing corporation.

(3) *Definitions.* For purposes of this section:

(i) *Significant holder* means any person that, immediately before the exchange—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is publicly traded; or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is not publicly traded.

(ii) *Publicly traded stock* means stock that is listed on—

(A) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(B) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

(iii) *Issuing corporation* means the corporation that issued the shares of stock, some or all of which were transferred by a significant holder to such corporation in the exchange described in paragraph (b)(2) of this section.

(4) *Cross reference.* See section 6043 of the Code for requirements relating to a return by a liquidating corporation.

(c) [Reserved]. For further guidance, see §1.302-2(c).

(d) *Effective date*—(1) *Applicability date.* This section applies to any original

Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 5. Section 1.302-4 is amended by revising paragraph (a) and adding paragraph (h) to read as follows:

§1.302-4 Termination of shareholder's interest.

(a) [Reserved]. For further guidance, see §1.302-4T(a).

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(h) [Reserved]. For further guidance, see §1.302-4T(h)(1).

Par. 6. Section 1.302-4T is added to read as follows:

§1.302-4T Termination of shareholder's interest (temporary).

(a) The agreement specified in section 302(c)(2)(A)(iii) shall be in the form of a statement entitled, "STATEMENT PURSUANT TO SECTION 302(c)(2)(A)(iii) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER OR RELATED PERSON, AS THE CASE MAY BE], A DISTRIBUTE (OR RELATED PERSON) OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF DISTRIBUTING CORPORATION]." The distributee must include such statement on or with the distributee's first return for the taxable year in which the distribution described in section 302(b)(3) occurs. If the distributee is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The distributee must represent in the statement—

(1) THE DISTRIBUTE (OR RELATED PERSON) HAS NOT ACQUIRED, OTHER THAN BY BEQUEST OR INHERITANCE, ANY INTEREST IN THE CORPORATION (AS DESCRIBED IN SECTION 302(c)(2)(A)(i)) SINCE THE DISTRIBUTION; and

(2) THE DISTRIBUTE (OR RELATED PERSON) WILL NOTIFY THE

INTERNAL REVENUE SERVICE OF ANY ACQUISITION, OTHER THAN BY BEQUEST OR INHERITANCE, OF SUCH AN INTEREST IN THE CORPORATION WITHIN 30 DAYS AFTER THE ACQUISITION, IF THE ACQUISITION OCCURS WITHIN 10 YEARS FROM THE DATE OF THE DISTRIBUTION.

(b) through (g) [Reserved]. For further guidance, see §1.302-4(b) through (g).

(h) *Effective date*—(1) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 7. Section 1.331-1 is amended by revising paragraph (d) and adding paragraph (f) to read as follows:

§1.331-1 Corporate liquidations.

* * * * *

(d) [Reserved]. For further guidance, see §1.331-1T(d).

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(f) [Reserved]. For further guidance, see §1.331-1T(f)(1).

Par. 8. Section 1.331-1T is added to read as follows:

§1.331-1T Corporate liquidations (temporary).

(a) through (c) [Reserved]. For further guidance, see §1.331-1(a) through (c).

(d) *Reporting requirement*—(1) *General rule.* Every significant holder that transfers stock to the issuing corporation in exchange for property from such corporation must include on or with such holder's return for the year of such exchange the statement described in paragraph (d)(2) of this section unless—

(i) The property is part of a distribution made pursuant to a corporate resolution reciting that the distribution is made in complete liquidation of the corporation; and

(ii) The issuing corporation is completely liquidated and dissolved within one year after the distribution.

(2) *Statement.* If required by paragraph (d)(1) of this section, a signif-

ificant holder must include on or with such holder's return a statement entitled, "STATEMENT PURSUANT TO §1.331-1T(d) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER OF THE STOCK OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ISSUING CORPORATION]." If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(i) The fair market value and basis of the stock transferred by the significant holder to the issuing corporation; and

(ii) A description of the property received by the significant holder from the issuing corporation.

(3) *Definitions.* For purposes of this section:

(i) *Significant holder* means any person that, immediately before the exchange—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is publicly traded; or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is not publicly traded.

(ii) *Publicly traded stock* means stock that is listed on—

(A) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(B) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

(iii) *Issuing corporation* means the corporation that issued the shares of stock, some or all of which were transferred by a significant holder to such corporation in the exchange described in paragraph (d)(1) of this section.

(4) *Cross reference.* See section 6043 of the Code for requirements relating to a return by a liquidating corporation.

(e) [Reserved]. For further guidance, see §1.331-1(e).

(f) *Effective date*—(1) *Applicability date.* This section applies to any original

Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

§1.332-6 [Removed]

Par. 9. Section 1.332-6 is removed.

Par. 10. Section 1.332-6T is added to read as follows:

§1.332-6T Records to be kept and information to be filed with return (temporary).

(a) *Statement filed by recipient corporation.* If any recipient corporation received a liquidating distribution from the liquidating corporation pursuant to a plan (whether or not that recipient corporation has received or will receive other such distributions from the liquidating corporation in other tax years as part of the same plan) during the current tax year, such recipient corporation must include a statement entitled, "STATEMENT PURSUANT TO SECTION 332 BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A CORPORATION RECEIVING A LIQUIDATING DISTRIBUTION," on or with its return for such year. If any recipient corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and employer identification number (if any) of the liquidating corporation;

(2) The date(s) of all distribution(s) (whether or not pursuant to the plan) by the liquidating corporation during the current tax year;

(3) The aggregate fair market value and basis, determined immediately before the liquidation, of all of the assets of the liquidating corporation that have been or will be transferred to any recipient corporation;

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the liquidation;

(5) The following representation: THE PLAN OF COMPLETE LIQUIDATION WAS ADOPTED ON [INSERT DATE (mm/dd/yyyy)]; and

(6) A representation by such recipient corporation either that—

(i) THE LIQUIDATION WAS COMPLETED ON [INSERT DATE (mm/dd/yyyy)]; or

(ii) THE LIQUIDATION IS NOT COMPLETE AND THE TAXPAYER HAS TIMELY FILED [INSERT EITHER FORM 952, "Consent To Extend the Time to Assess Tax Under Section 332(b)," OR NUMBER AND NAME OF THE SUCCESSOR FORM].

(b) *Filings by the liquidating corporation.* The liquidating corporation must timely file Form 966, "Corporate Dissolution or Liquidation," (or its successor form) and its final Federal corporate income tax return. See also section 6043 of the Code.

(c) *Definitions.* For purposes of this section:

(1) *Plan* means the plan of complete liquidation within the meaning of section 332.

(2) *Recipient corporation* means the corporation described in section 332(b)(1).

(3) *Liquidating corporation* means the corporation that makes a distribution of property to a recipient corporation pursuant to the plan.

(4) *Liquidating distribution* means a distribution of property made by the liquidating corporation to a recipient corporation pursuant to the plan.

(d) *Substantiation information.* Under §1.6001-1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with a liquidation described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all distributed property, and relevant facts regarding any liabilities assumed or extinguished as part of such liquidation.

(e) *Effective date*—(1) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 11. Section 1.338-0 is amended by revising the entry for §1.338-10(a)(4)(iii) and adding entries for §1.338-10(c) and §1.338-10T to read as follows:

§1.338-0 Outline of topics.

* * * * *

§1.338-10 Filing of returns.

- (a) * * *
- (4) * * *
- (iii) [Reserved]

* * * * *

- (c) [Reserved]

§1.338-10T Filing of returns (temporary).

- (a)(1) through (a)(4)(ii) [Reserved]
- (iii) Procedure for filing a combined return.

- (a)(4)(iv) through (b) [Reserved]
- (c) Effective date.
 - (1) Applicability date.
 - (2) Expiration date.

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Par. 12. Section 1.338-10 is amended by revising paragraph (a)(4)(iii) and adding paragraph (c) to read as follows:

§1.338-10 Filing of returns.

- (a) * * *
- (4) * * *
- (iii) [Reserved]. For further guidance, see §1.338-10T(a)(4)(iii).

* * * * *

- (c) [Reserved]. For further guidance, see §1.338-10T(c)(1).

Par. 13. Section 1.338-10T is added to read as follows:

§1.338-10T Filing of returns (temporary).

- (a)(1) through (a)(4)(ii) [Reserved]. For further guidance, see §1.338-10(a)(1) through (a)(4)(ii).

(iii) *Procedure for filing a combined return.* A combined return is made by filing a single corporation income tax return in lieu of separate deemed sale returns for all targets required to be included in the combined return. The combined return reflects the deemed asset sales of all targets required to be included in the

combined return. If the targets included in the combined return constitute a single affiliated group within the meaning of section 1504(a), the income tax return is signed by an officer of the common parent of that group. Otherwise, the return must be signed by an officer of each target included in the combined return. Rules similar to the rules in §1.1502-75(j) apply for purposes of preparing the combined return. The combined return must include a statement entitled, "ELECTION TO FILE A COMBINED RETURN UNDER SECTION 338(h)(15)." The statement must include—

(A) The name, address, and employer identification number of each target required to be included in the combined return; and

(B) The following declaration: EACH TARGET IDENTIFIED IN THIS ELECTION TO FILE A COMBINED RETURN CONSENTS TO THE FILING OF A COMBINED RETURN.

(a)(4)(iv) through (b) [Reserved]. For further guidance, see §1.338-10(a)(4)(iv) through (b).

(c) *Effective date*—(1) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

§1.351-3 [Removed]

Par. 14. Section 1.351-3 is removed.

Par. 15. Section 1.351-3T is added to read as follows:

§1.351-3T Records to be kept and information to be filed (temporary).

(a) *Significant transferor.* Every significant transferor must include a statement entitled, "STATEMENT PURSUANT TO §1.351-3T(a) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT TRANSFEROR," on or with such transferor's income tax return for the taxable year of the section 351 exchange. If a significant transferor is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of

section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and employer identification number (if any) of the transferee corporation;

(2) The date(s) of the transfer(s) of assets;

(3) The aggregate fair market value and basis, determined immediately before the exchange, of the property transferred by such transferor in the exchange; and

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the section 351 exchange.

(b) *Transferee corporation.* Except as provided in paragraph (c) of this section, every transferee corporation must include a statement entitled, "STATEMENT PURSUANT TO §1.351-3T(b) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A TRANSFEREE CORPORATION," on or with its income tax return for the taxable year of the exchange. If the transferee corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and taxpayer identification number (if any) of every significant transferor;

(2) The date(s) of the transfer(s) of assets;

(3) The aggregate fair market value and basis, determined immediately before the exchange, of all of the property received in the exchange; and

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the section 351 exchange.

(c) *Exception for certain transferee corporations.* The transferee corporation is not required to file a statement under paragraph (b) of this section if all of the information that would be included in the statement described in paragraph (b) of this section is included in any statement(s) described in paragraph (a) of this section that is attached to the same return for the same section 351 exchange.

(d) *Definitions.* For purposes of this section:

(1) *Significant transferor* means a person that transferred property to a corporation and received stock of the transferee corporation in an exchange described in section 351 if, immediately after the exchange, such person—

(i) Owned at least five percent (by vote or value) of the total outstanding stock of the transferee corporation if the stock owned by such person is publicly traded, or

(ii) Owned at least one percent (by vote or value) of the total outstanding stock of the transferee corporation if the stock owned by such person is not publicly traded.

(2) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

(e) *Substantiation information*. Under §1.6001-1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the exchange described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all transferred property, and relevant facts regarding any liabilities assumed or extinguished as part of such exchange.

(f) *Effective date*—(1) *Applicability date*. This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date*. The applicability of this section will expire on May 26, 2009.

Par. 16. Section 1.355-0 is amended by removing the entry for §1.355-5 and adding an entry for §1.355-5T.

The revision and addition read as follows:

§1.355-0 *Outline of sections*.

* * * * *

§1.355-5T *Records to be kept and information to be filed (temporary)*.

* * * * *

§1.355-5 [Removed]

Par. 17. Section 1.355-5 is removed.

Par. 18. Section 1.355-5T is added to read as follows:

§1.355-5T *Records to be kept and information to be filed (temporary)*.

(a) *Distributing corporation*—(1) *In general*. Every corporation that makes a distribution (the distributing corporation) of stock or securities of a controlled corporation, as described in section 355 (or so much of section 356 as relates to section 355), must include a statement entitled, “STATEMENT PURSUANT TO §1.355-5T(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A DISTRIBUTING CORPORATION,” on or with its return for the year of the distribution. If the distributing corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(i) The name and employer identification number (if any) of the controlled corporation;

(ii) The name and taxpayer identification number (if any) of every significant distributee;

(iii) The date of the distribution of the stock or securities of the controlled corporation;

(iv) The aggregate fair market value and basis, determined immediately before the distribution or exchange, of the stock, securities, or other property (including money) distributed by the distributing corporation in the transaction; and

(v) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the transaction.

(2) *Special rule when an asset transfer precedes a stock distribution*. If the distributing corporation transferred property to the controlled corporation in a transaction described in section 351 or 368, as part of a plan to then distribute the stock or

securities of the controlled corporation in a transaction described in section 355 (or so much of section 356 as relates to section 355), then, unless paragraph (a)(1)(v) of this section applies, the distributing corporation must also include on or with its return for the year of the distribution the statement required by §1.351-3T(a) or 1.368-3T(a). If the distributing corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include the statement required by §1.351-3T(a) or 1.368-3T(a) on or with its return.

(b) *Significant distributee*. Every significant distributee must include a statement entitled, “STATEMENT PURSUANT TO §1.355-5T(b) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT DISTRIBUTEE,” on or with such distributee’s return for the year in which such distribution is received. If a significant distributee is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The names and employer identification numbers (if any) of the distributing and controlled corporations;

(2) The date of the distribution of the stock or securities of the controlled corporation; and

(3) The aggregate basis, determined immediately before the exchange, of any stock or securities transferred by the significant distributee in the exchange, and the aggregate fair market value, determined immediately before the distribution or exchange, of the stock, securities or other property (including money) received by the significant distributee in the distribution or exchange.

(c) *Definitions*. For purposes of this section:

(1) *Significant distributee* means—

(i) A holder of stock of a distributing corporation that receives, in a transaction described in section 355 (or so much of section 356 as relates to section 355), stock of a corporation controlled by the distributing corporation if, immediately before the distribution or exchange, such holder—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the distributing corporation if the stock owned by such holder is publicly traded; or

(B) Owned at least one percent (by vote or value) of the stock of the distributing corporation if the stock owned by such holder is not publicly traded; or

(ii) A holder of securities of a distributing corporation that receives, in a transaction described in section 355 (or so much of section 356 as relates to section 355), stock or securities of a corporation controlled by the distributing corporation if, immediately before the distribution or exchange, such holder owned securities in such distributing corporation with a basis of \$1,000,000 or more.

(2) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

(d) *Substantiation information.* Under §1.6001-1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the distribution or exchange described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all property distributed or exchanged, and relevant facts regarding any liabilities assumed or extinguished as part of such distribution or exchange.

(e) *Effective date*—(1) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

§1.368-3 [Removed]

Par. 19. Section 1.368-3 is removed.

Par. 20. Section 1.368-3T is added to read as follows:

§1.368-3T *Records to be kept and information to be filed with returns (temporary).*

(a) *Parties to the reorganization.* The plan of reorganization must be adopted by each of the corporations that are parties thereto. Each such corporation must include a statement entitled, “STATEMENT PURSUANT TO §1.368-3T(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A CORPORATION A PARTY TO A REORGANIZATION,” on or with its return for the taxable year of the exchange. If any such corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. However, it is not necessary for any taxpayer to include more than one such statement on or with the same return for the same reorganization. The statement must include—

(1) The names and employer identification numbers (if any) of all such parties;

(2) The date of the reorganization;

(3) The aggregate fair market value and basis, determined immediately before the exchange, of the assets, stock or securities of the target corporation transferred in the transaction; and

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with this reorganization.

(b) *Significant holders.* Every significant holder, other than a corporation a party to the reorganization, must include a statement entitled, “STATEMENT PURSUANT TO §1.368-3T(b) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER,” on or with such holder’s return for the taxable year of the exchange. If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The names and employer identification numbers (if any) of all of the parties to the reorganization;

(2) The date of the reorganization; and

(3) The fair market value, determined immediately before the exchange, of all the stock or securities of the target corporation held by the significant holder that is transferred in the transaction and such holder’s basis, determined immediately before the exchange, in the stock or securities of such target corporation.

(c) *Definitions.* For purposes of this section:

(1) *Significant holder* means—

(i) A holder of stock of the target corporation that receives stock or securities in an exchange described in section 354 (or so much of section 356 as relates to section 354) if, immediately before the exchange, such holder—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the target corporation if the stock owned by such holder is publicly traded; or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the target corporation if the stock owned by such holder is not publicly traded; or

(ii) A holder of securities of the target corporation that receives stock or securities in an exchange described in section 354 (or so much of section 356 as relates to section 354) if, immediately before the exchange, such holder owned securities in such target corporation with a basis of \$1,000,000 or more.

(2) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

(d) *Substantiation information.* Under §1.6001-1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the reorganization described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all transferred property, and relevant facts regarding any liabilities assumed or extinguished as part of such reorganization.

(e) *Effective date*—(1) *Applicability date*. This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date*. The applicability of this section will expire on May 26, 2009.

Par. 21. Section 1.381(b)–1 is amended by revising paragraph (b)(3) and adding paragraph (e) to read as follows:

§1.381(b)–1 Operating rules applicable to carryovers in certain corporate acquisitions.

* * * * *

(b) * * *

(3) [Reserved]. For further guidance, see §1.381(b)–1T(b)(3).

* * * * *

(e) [Reserved]. For further guidance, see §1.381(b)–1T(e)(1).

Par. 22. Section 1.381(b)–1T is added to read as follows:

§1.381(b)–1T Operating rules applicable to carryovers in certain corporate acquisitions (temporary).

(a) through (b)(2) [Reserved]. For further guidance, see §1.381(b)–1(a) through (b)(2).

(3) *Election*—(i) *Content of statements*. The statements referred to in paragraph (b)(2) of §1.381(b)–1 must be entitled, “ELECTION OF DATE OF DISTRIBUTION OR TRANSFER PURSUANT TO §1.381(b)–1(b)(2),” and must include: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF DISTRIBUTOR OR TRANSFEROR CORPORATION] AND [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ACQUIRING CORPORATION] ELECT TO DETERMINE THE DATE OF DISTRIBUTION OR TRANSFER UNDER §1.381(b)–1(b)(2). SUCH DATE IS [INSERT DATE (mm/dd/yyyy)].

(ii) *Filing of statements*. One statement must be included on or with the timely filed Federal income tax return of the distributor or transferor corporation for its taxable year ending with the date of distribution or transfer. An identical statement must be included on or with the timely

filed Federal income tax return of the acquiring corporation for its first taxable year ending after that date. If the distributor or transferor corporation, or the acquiring corporation, is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return.

(b)(4) through (d) [Reserved]. For further guidance, see §1.381(b)–1(b)(4) through (d).

(e) *Effective date*—(1) *Applicability date*. This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date*. The applicability of this section will expire on May 26, 2009.

Par. 23. Section 1.382–1 is amended by:

1. Revising the entry for §1.382–2T(a)(2)(ii).

2. Revising the entry for §1.382–8(c)(2).

3. Redesignating the entry for §1.382–8(e)(4) as the entry for §1.382–8(e)(5).

4. Adding entries for paragraphs (e)(4) and (j)(4) of §1.382–8.

5. Revising the entry for paragraph (h), and removing the entries for paragraphs (h)(1), (h)(2) and (h)(3), of §1.382–8.

6. Adding entries for §1.382–8T.

7. Removing the entry for §1.382–11.

8. Adding entries for §1.382–11T.

The additions and revisions read as follows:

§1.382–1 Table of contents.

* * * * *

§1.382–2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

* * * * *

(a) * * *

(2) * * *

(ii) [Reserved]

* * * * *

§1.382–8 Controlled groups.

* * * * *

(c) * * *

(2) [Reserved]

* * * * *

(e) * * *

(4) [Reserved]

(5) Predecessor and successor corporation.

* * * * *

(h) [Reserved]

* * * * *

(j) * * *

(4) [Reserved]

§1.382–8T Controlled groups (temporary).

(a) through (c)(1) [Reserved]

(c)(2) Restoration of value.

(c)(3) through (e)(3) [Reserved]

(e)(4) Foreign component member.

(i) In general.

(ii) Exception.

(e)(5) through (g) [Reserved]

(h) Time and manner of filing election to restore.

(1) Statements required.

(i) Filing by loss corporation.

(ii) Filing by electing member.

(iii) Agreement.

(2) Special rule for foreign component members.

(i) Deemed election to restore full value.

(ii) Election not to restore full value.

(iii) Agreement.

(3) Revocation of election.

(i) through (j)(3) [Reserved]

(j)(4) Effective date.

(i) Applicability date.

(ii) Expiration date.

* * * * *

§1.382–11T Reporting requirements (temporary).

(a) Information statement required.

(b) Effective date.

(1) Applicability date.

(2) Expiration date.

Par. 24. Section 1.382–2T is amended by removing and reserving paragraph (a)(2)(ii) to read as follows:

§1.382–2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

* * * * *

(a) * * *

(2) * * *

(ii) [Reserved]. For further guidance, see §1.382-11T(a).

* * * * *

Par. 25. Section 1.382-8 is amended as follows:

1. Revising paragraphs (c)(2) and (h).

2. Redesignating paragraph (e)(4) as paragraph (e)(5).

3. Adding new paragraphs (e)(4) and (j)(4).

The additions and revisions read as follows:

§1.382-8 Controlled groups.

* * * * *

(c) * * *

(2) [Reserved]. For further guidance, see §1.382-8T(c)(2).

* * * * *

(e) * * *

(4) [Reserved]. For further guidance, see §1.382-8T(e)(4).

(5) Predecessor and successor corporation. * * *

* * * * *

(h) [Reserved]. For further guidance, see §1.382-8T(h).

* * * * *

(j) * * *

(4) [Reserved]. For further guidance, see §1.382-8T(j)(4)(i).

Par. 26. Section 1.382-8T is added to read as follows:

§1.382-8T Controlled groups (temporary).

(a) through (c)(1) [Reserved]. For further guidance, see §1.382-8(a) through (c)(1).

(2) *Restoration of value.* After the value of the stock of each component member is reduced pursuant to paragraph (c)(1) of §1.382-8, the value of the stock of each component member is increased by the amount of value, if any, restored to the component member by another component member (the electing member) pursuant to this paragraph (c)(2). The electing member may elect (or may be deemed to elect under paragraph (h)(2)(i) of this section in the case of a foreign component member) to restore value to another component

member in an amount that does not exceed the lesser of—

(i) The sum of—

(A) The value, determined immediately before the ownership change, of the electing member's stock (after adjustment under paragraph (c)(1) of §1.382-8 and before any restoration of value under this paragraph (c)(2)); plus

(B) Any amount of value restored to the electing member by another component member under this paragraph (c)(2); or

(ii) The value, determined immediately before any ownership change, of the electing member's stock (without regard to any adjustment under this section) that is directly owned by the other component member immediately after the ownership change.

(c)(3) through (e)(3) [Reserved]. For further guidance, see §1.382-8(c)(3) through (e)(3).

(4) *Foreign component member*—(i) In general. Except as provided in paragraph (e)(4)(ii) of this section, foreign component member means a component member that is a foreign corporation.

(ii) *Exception.* A foreign component member shall not include a foreign corporation that has items treated as connected with the conduct of a trade or business in the United States that it takes into account in determining its value pursuant to section 382(e)(3).

(e)(5) through (g) [Reserved]. For further guidance, see §1.382-8(e)(5) through (g).

(h) *Time and manner of filing election to restore*—(1) *Statements required*—

(i) *Filing by loss corporation.* The election to restore value described in paragraph (c)(2) of this section must be in the form set forth in this paragraph (h)(1)(i). It must be filed by the loss corporation by including a statement on or with its income tax return for the taxable year in which the ownership change occurs (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs). The common parent of a consolidated group must make the election on behalf of the group. The election is made in the form of a statement entitled, "STATEMENT PURSUANT TO §1.382-8T(h)(1) TO ELECT

TO RESTORE ALL OR PART OF THE VALUE OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF THE ELECTING MEMBER] TO [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF THE CORPORATION TO WHICH VALUE IS RESTORED]." The statement must include the amount of the value being restored and must also indicate that an agreement signed and dated by both parties, as described in paragraph (h)(1)(iii) of this section, has been entered into. Each such party must retain either the original or a copy of this agreement as part of its records. See §1.6001-1(e).

(ii) *Filing by electing member.* An electing member must include a statement identical to the one described in paragraph (h)(1)(i) of this section on or with its income tax return (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs) (if any) for the taxable year which includes the change date in connection with which the election described in paragraph (c)(2) of this section is made. If the electing member is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. It is not necessary for the electing member (or the United States shareholder, as the case may be) to include this statement on or with its return if the loss corporation includes an identical statement on or with the same return for the same election.

(iii) *Agreement.* Both the electing member and the corporation to which value is restored must sign and date an agreement. The agreement must—

(A) Identify the change date for the loss corporation in connection with which the election is made;

(B) State the value of the electing member's stock (without regard to any adjustment under paragraphs (c)(1), (c)(3), (c)(4) and (c)(5) of §1.382-8 and paragraph (c)(2) of this section) immediately before the ownership change;

(C) State the amount of any reduction required under paragraph (c)(1) of §1.382-8 with respect to stock of the electing member that is owned directly

or indirectly by the corporation to which value is restored;

(D) State the amount of value that the electing member elects to restore to the corporation; and

(E) State whether the value of either component member's stock was adjusted pursuant to paragraph (c)(4) of §1.382-8.

(2) *Special rule for foreign component members*—(i) *Deemed election to restore full value.* Unless the election described in paragraph (h)(2)(ii) of this section is made for a foreign component member, each foreign component member of the controlled group is deemed to have elected to restore to each other component member the maximum value allowable under paragraph (c)(2) of this section, taking into account the limitations of §1.382-8.

(ii) *Election not to restore full value.* (A) A loss corporation may elect to reduce the amount of value restored from a foreign component member (the electing foreign component member) to another component member under paragraph (h)(2)(i) of this section in the form set forth in this paragraph (h)(2)(ii). It must be filed by the loss corporation by including a statement on or with its income tax return for the taxable year in which the ownership change occurs (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs). The common parent of a consolidated group must make the election on behalf of the group. The election is made in the form of a statement entitled, "STATEMENT PURSUANT TO §1.382-8T(h)(2)(ii) TO ELECT NOT TO RESTORE FULL VALUE OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ELECTING FOREIGN COMPONENT MEMBER] TO [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF THE CORPORATION TO WHICH SUCH VALUE IS NOT TO BE RESTORED]." The statement must include the amount of the value not being restored and must also indicate that an agreement signed and dated by both parties, as described in paragraph (h)(2)(iii) of this section, has been entered into. Each such party must retain either the original or a copy of the agreement as part of its records. See §1.6001-1(e).

(B) An electing foreign component member must include a statement identical to the one described in paragraph (h)(2)(ii)(A) of this section on or with its income tax return (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs) (if any) for the taxable year which includes the change date in connection with which the election described in paragraph (h)(2)(ii)(A) of this section is made. If the electing foreign component member is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. It is not necessary for the electing foreign component member (or United States shareholder, as the case may be) to include this statement on or with its return if the loss corporation includes an identical statement on or with the same return for the same election.

(iii) *Agreement.* Both the electing foreign component member and the corporation to which full value is not restored must sign and date an agreement. The agreement must—

(A) Identify the change date for the loss corporation in connection with which the election is made;

(B) State the value of the electing foreign component member's stock (without regard to any adjustment under paragraphs (c)(1), (c)(3), (c)(4) and (c)(5) of §1.382-8 and paragraph (c)(2) of this section) immediately before the ownership change;

(C) State the amount of any reduction required under paragraph (c)(1) of §1.382-8 with respect to stock of the electing foreign component member that is owned directly or indirectly by the corporation to which value is not restored;

(D) State the amount of value that the electing foreign component member elects not to restore to the corporation; and

(E) State whether the value of either component member's stock was adjusted pursuant to paragraph (c)(4) of §1.382-8.

(3) *Revocation of election.* An election (other than the deemed election described in paragraph (h)(2)(i) of this section) made under this section is revocable only with the consent of the Commissioner.

(i) through (j)(3) [Reserved]. For further guidance, see §1.382-8(i) through (j)(3).

(4) *Effective date*—(i) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

§1.382-11 [Removed]

Par. 27. Section 1.382-11 is removed.

Par. 28. Section 1.382-11T is added to read as follows:

§1.382-11T Reporting requirements (temporary).

(a) *Information statement required.* A loss corporation must include a statement entitled, "STATEMENT PURSUANT TO §1.382-11T(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF TAXPAYER], A LOSS CORPORATION," on or with its income tax return for each taxable year that it is a loss corporation in which an owner shift, equity structure shift or other transaction described in paragraph (a)(2)(i) of §1.382-2T occurs. The statement must include the date(s) of any owner shifts, equity structure shifts, or other transactions described in paragraph (a)(2)(i) of §1.382-2T, the date(s) on which any ownership change(s) occurred, and the amount of any attributes described in paragraph (a)(1)(i) of §1.382-2 that caused the corporation to be a loss corporation. A loss corporation may also be required to include certain elections on this statement, including—

(1) An election made under §1.382-2T(h)(4)(vi)(B) to disregard the deemed exercise of an option if the actual exercise of that option occurred within 120 days of the ownership change; and

(2) An election made under §1.382-6(b)(2) to close the books of the loss corporation for purposes of allocating income and loss to periods before and after the change date for purposes of section 382.

(b) *Effective date*—(1) *Applicability date.* This section applies to any original

Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

§1.1081-11 [Removed]

Par. 29. Section 1.1081-11 is removed.

Par. 30. Section 1.1081-11T is added to read as follows:

§1.1081-11T Records to be kept and information to be filed with returns (temporary).

(a) *Distributions and exchanges; significant holders of stock or securities.* Every significant holder must include a statement entitled, “STATEMENT PURSUANT TO §1.1081-11T(a) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER,” on or with such holder’s income tax return for the taxable year in which the distribution or exchange occurs. If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and employer identification number (if any) of the corporation from which the stock, securities, or other property (including money) was received by such significant holder;

(2) The aggregate basis, determined immediately before the exchange, of any stock or securities transferred by the significant holder in the exchange, and the aggregate fair market value, determined immediately before the distribution or exchange, of the stock, securities or other property (including money) received by the significant holder in the distribution or exchange; and

(3) The date of the distribution or exchange.

(b) *Distributions and exchanges; corporations subject to Commission orders.* Each corporation which is a party to a distribution or exchange made pursuant to an order of the Commission must include on or with its income tax return for its taxable year in which the distribution or exchange

takes place a statement entitled, “STATEMENT PURSUANT TO §1.1081-11T(b) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A DISTRIBUTING OR EXCHANGING CORPORATION.” If the distributing or exchanging corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The date and control number of the Commission order, pursuant to which the distribution or exchange was made;

(2) The names and taxpayer identification numbers (if any) of the significant holders;

(3) The aggregate fair market value and basis, determined immediately before the distribution or exchange, of the stock, securities, or other property (including money) transferred in the distribution or exchange; and

(4) The date of the distribution or exchange.

(c) *Sales by members of system groups.* Each system group member must include a statement entitled, “STATEMENT PURSUANT TO §1.1081-11T(c) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SYSTEM GROUP MEMBER,” on or with its income tax return for the taxable year in which the sale is made. If any system group member is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The dates and control numbers of all relevant Commission orders;

(2) The aggregate fair market value and basis, determined immediately before the sale, of all stock or securities sold; and

(3) The date of the sale.

(d) *Definitions.* (1) For purposes of this section, *Commission* means the Securities and Exchange Commission.

(2) For purposes of this section, *significant holder* means a person that receives stock or securities from a corporation (the distributing corporation) pursuant to an order of the Commission, if, immediately before the transaction, such person—

(i) In the case of stock—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the distributing corporation if the stock owned by such person is publicly traded, or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the distributing corporation if the stock owned by such person is not publicly traded; or

(ii) In the case of securities, owned securities of the distributing corporation with a basis of \$1,000,000 or more.

(3) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

(4) For purposes of paragraph (b) of this section, *exchange* means exchange, expenditure, or investment.

(5) For purposes of paragraph (c) of this section, *system group member* means each corporation which is a member of a system group and which, pursuant to an order of the Commission, sells stock or securities received upon an exchange (pursuant to an order of the Commission) and applies the proceeds derived therefrom in retirement or cancellation of its own stock or securities.

(e) *Substantiation information.* Under §1.6001-1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the distribution or exchange described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all property distributed or exchanged, and relevant facts regarding any liabilities assumed or extinguished as part of such distribution or exchange.

(f) *Effective date*—(1) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 31. Section 1.1221-2 is amended by revising paragraph (e)(2)(iv) and adding paragraphs (i) through (j) to read as follows:

§1.1221-2 Hedging transactions.

* * * * *

(e) * * *

(2) * * *

(iv) [Reserved]. For further guidance, see §1.1221-2T(e)(2)(iv).

* * * * *

(i) through (j) [Reserved]. For further guidance, see §1.1221-2T(i) through (j)(1).

Par. 32. Section 1.1221-2T is added to read as follows:

§1.1221-2T Hedging transactions (temporary).

(a) through (e)(2)(iii) [Reserved]. For further guidance, see §1.1221-2(a) through (e)(2)(iii).

(iv) *Making and revoking the election.* Unless the Commissioner otherwise prescribes, the election described in paragraph (e)(2) of §1.1221-2 must be made in a separate statement that provides, “[INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF COMMON PARENT] HEREBY ELECTS THE APPLICATION OF §1.1221-2(e)(2) (THE SEPARATE-ENTITY APPROACH).” The statement must also indicate the date as of which the election is to be effective. The election must be filed by including the statement on or with the consolidated group’s income tax return for the taxable year that includes the first date for which the election is to apply. The election applies to all transactions entered into on or after the date so indicated. The election may only be revoked with the consent of the Commissioner.

(e)(3) through (h) [Reserved]. For further guidance, see §1.1221-2(e)(3) through (h).

(i) [Reserved]

(j) *Effective date—(1) Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may

apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 33. Section 1.1502-13 is amended by revising paragraphs (f)(5)(ii)(E) and (f)(6)(i)(C)(2) and adding paragraph (m) to read as follows:

§1.1502-13 Intercompany transactions.

* * * * *

(f) * * *

(5) * * *

(ii) * * *

(E) [Reserved]. For further guidance, see §1.1502-13T(f)(5)(ii)(E).

(6) * * *

(i) * * *

(C) * * *

(2) [Reserved]. For further guidance, see §1.1502-13T(f)(6)(i)(C)(2).

* * * * *

(m) [Reserved]. For further guidance, see §1.1502-13T(m)(1).

Par. 34. Section 1.1502-13T is added to read as follows:

§1.1502-13T Intercompany transactions (temporary).

(a) through (f)(5)(ii)(D) [Reserved]. For further guidance, see §1.1502-13(a) through (f)(5)(ii)(D).

(E) *Election.* An election to apply paragraph (f)(5)(ii) of §1.1502-13 is made in a separate statement entitled, “[INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF COMMON PARENT] HEREBY ELECTS THE APPLICATION OF §1.1502-13(f)(5)(ii) FOR AN INTERCOMPANY TRANSACTION INVOLVING [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF S] AND [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF T].” A separate election must be made for each such application. The election must be filed by including the statement on or with the consolidated group’s income tax return for the year of T’s liquidation (or other transaction). The Commissioner may impose reasonable terms and conditions to the application

of paragraph (f)(5)(ii) of §1.1502-13 that are consistent with the purposes of such section. The statement must—

(1) Identify S’s intercompany transaction and T’s liquidation (or other transaction); and

(2) Specify which provision of §1.1502-13(f)(5)(ii) applies and how it alters the otherwise applicable results under this section (including, for example, the amount of S’s intercompany items and the amount deferred or offset as a result of §1.1502-13(f)(5)(ii)).

(f)(6) through (f)(6)(i)(C)(1) [Reserved]. For further guidance, see §1.1502-13(f)(6) through (f)(6)(i)(C)(1).

(2) *Election.* The election described in paragraph (f)(6)(i)(C)(1) of §1.1502-13 must be made in a separate statement entitled, “ELECTION TO REDUCE BASIS OF P STOCK UNDER §1.1502-13(f)(6) HELD BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF MEMBER WHOSE BASIS IN P STOCK IS REDUCED].” The election must be filed by including the statement on or with the consolidated group’s income tax return for the year in which the nonmember becomes a member. The statement must identify the member’s basis in the P stock (taking into account the effect of this election) and the number of shares of P stock held by the member.

(f)(6)(ii) through (l) [Reserved]. For further guidance, see §1.1502-13(f)(6)(ii) through (l).

(m) *Effective date—(1) Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 35. Section 1.1502-31 is amended by revising paragraph (e)(2) and adding paragraphs (i) through (j) to read as follows:

§1.1502-31 Stock basis after a group structure change.

* * * * *

(e) * * *
(2) [Reserved]. For further guidance, see §1.1502-31T(e)(2).

* * * * *
(i) through (j) [Reserved]. For further guidance, see §1.1502-31T(i) through (j)(1).

Par. 36. Section 1.1502-31T is added to read as follows:

§1.1502-31T Stock basis after a group structure change (temporary).

(a) through (e)(1) [Reserved]. For further guidance, see §1.1502-31(a) through (e)(1).

(2) *Election.* The election described in paragraph (e)(1) of §1.1502-31 must be made in a separate statement entitled, "ELECTION TO TREAT LOSS CARRYOVER AS EXPIRING UNDER §1.1502-31(e)." The election must be filed by including the statement on or with the consolidated group's income tax return for the year that includes the group structure change. The statement must identify the amount of each loss carryover deemed to expire (or the amount of each loss carryover deemed not to expire, with any balance of any loss carryovers being deemed to expire).

(f) through (h) [Reserved]. For further guidance, see §1.1502-31(f) through (h).

(i) [Reserved]

(j) *Effective date—(1) Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 37. Section 1.1502-32 is amended by revising paragraph (b)(4)(iv) and adding paragraphs (i) through (j) to read as follows:

§1.1502-32 Investment adjustments.

* * * * *
(b) * * *
(4) * * *

(iv) [Reserved]. For further guidance, see §1.1502-32T(b)(4)(iv).

* * * * *
(i) through (j) [Reserved]. For further guidance, see §1.1502-32T(i) through (j)(1).

Par. 38. Section 1.1502-32T is added to read as follows:

§1.1502-32T Investment adjustments (temporary).

(a) through (b)(4)(iii) [Reserved]. For further guidance, see §1.1502-32(a) through (b)(4)(iii).

(iv) *Election.* The election described in paragraph (b)(4) of §1.1502-32 must be made in a separate statement entitled, "ELECTION TO TREAT LOSS CARRYOVER OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF S] AS EXPIRING UNDER §1.1502-32(b)(4)." The election must be filed by including a statement on or with the consolidated group's income tax return for the year S becomes a member. A separate statement must be made for each member whose loss carryover is deemed to expire. The statement must identify the amount of each loss carryover deemed to expire (or the amount of each loss carryover deemed not to expire, with any balance of any loss carryovers being deemed to expire) and the basis of any stock reduced as a result of the deemed expiration.

(b)(4)(v) through (h) [Reserved]. For further guidance, see §1.1502-32(b)(4)(v) through (h).

(i) [Reserved]

(j) *Effective date—(1) Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 39. Section 1.1502-33 is amended by revising paragraph (d)(5)(i)(D) and adding paragraph (k) to read as follows:

§1.1502-33 Earnings and profits.

* * * * *
(d) * * *
(5) * * *
(i) * * *

(D) [Reserved]. For further guidance, see §1.1502-33T(d)(5)(i)(D).

* * * * *

(k) [Reserved]. For further guidance, see §1.1502-33T(k)(1).

Par. 40. Section 1.1502-33T is added to read as follows:

§1.1502-33T Earnings and profits (temporary).

(a) through (d)(5)(i)(C) [Reserved]. For further guidance, see §1.1502-33(a) through (d)(5)(i)(C).

(D) If a method is permitted under paragraph (d)(4) of §1.1502-33, provide the date and control number of the private letter ruling issued by the Internal Revenue Service approving such method.

(d)(5)(ii) through (j) [Reserved]. For further guidance, see §1.1502-33(d)(5)(ii) through (j).

(k) *Effective date—(1) Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 41. Section 1.1502-35 is amended by revising paragraph (c)(4)(i) and adding paragraph (k) to read as follows:

§1.1502-35 Transfers of subsidiary stock and deconsolidations of subsidiaries.

* * * * *
(c) * * *
(4) * * *

(i) [Reserved]. For further guidance, see § 1.1502-35T(c)(4)(i).

* * * * *

(k) [Reserved]. For further guidance, see §1.1502-35T(k)(1).

Par. 42. Section 1.1502-35T is added to read as follows:

§1.1502-35T Transfers of subsidiary stock and deconsolidations of subsidiaries (temporary).

(a) through (c)(3) [Reserved]. For further guidance, see § 1.1502-35(a) through (c)(3).

(4) *Reduction of suspended loss*—(i) *General rule.* The amount of any loss suspended pursuant to paragraphs (c)(1) and (c)(2) of §1.1502-35 shall be reduced, but not below zero, by the subsidiary's (and any successor's) items of deduction and loss, and the subsidiary's (and any successor's) allocable share of items of deduction and loss of all lower-tier subsidiaries, that are allocable to the period beginning on the date of the disposition that gave rise to the suspended loss and ending on the day before the first date on which the subsidiary (and any successor) is not a member of the group of which it was a member immediately prior to the disposition (or any successor group), and that are taken into account in determining consolidated taxable income (or loss) of such group for any taxable year that includes any date on or after the date of the disposition and before the first date on which the subsidiary (and any successor) is not a member of such group; provided, however, that such reduction shall not exceed the excess of the amount of such items over the amount of such items that are taken into account in determining the basis adjustments made under §1.1502-32 to stock of the subsidiary (or any successor) owned by members of the group. The preceding sentence shall not apply to items of deduction and loss to the extent that the group can establish that all or a portion of such items was not reflected in the computation of the duplicated loss with respect to the subsidiary on the date of the disposition of stock that gave rise to the suspended loss.

(c)(4)(ii) through (j) [Reserved]. For further guidance, see §1.1502-35(c)(4)(ii) through (j).

(k) *Effective date*—(1) *Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 43. Section 1.1502-76 is amended by revising paragraph (b)(2)(ii)(D) and adding paragraph (d) to read as follows:

§1.1502-76 Taxable year of members of group.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(D) [Reserved]. For further guidance, see §1.1502-76T(b)(2)(ii)(D).

* * * * *

(d) [Reserved]. For further guidance, see §1.1502-76T(d)(1).

Par. 44. Section 1.1502-76T is added to read as follows:

§1.1502-76T Taxable year of members of group (temporary).

(a) through (b)(2)(ii)(C) [Reserved]. For further guidance, see §1.1502-76(a) through (b)(2)(ii)(C).

(D) *Election*—(1) *Statement.* The election to ratably allocate items under paragraph (b)(2)(ii) of §1.1502-76 must be made in a separate statement entitled, “THIS IS AN ELECTION UNDER §1.1502-76(b)(2)(ii) TO RATABLY ALLOCATE THE YEAR’S ITEMS OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF THE MEMBER].” The election must be filed by including a statement on or with the returns including the items for the years ending and beginning with S’s change in status. If two or more members of the same consolidated group, as a consequence of the same plan or arrangement, cease to be members of that group and remain affiliated as members of another consolidated group, an election under this paragraph (b)(2)(ii)(D)(1) may be made only if it is made by each such member. Each statement must also indicate that an agreement, as described in paragraph (b)(2)(ii)(D)(2) of this section, has been entered into. Each party signing the agreement must retain either the original or a copy of the agreement as part of its records. See §1.6001-1(e).

(2) *Agreement.* For each election under paragraph (b)(2)(ii) of §1.1502-76, the member and the common parent of each affected group must sign and date an agreement. The agreement must—

(i) Identify the extraordinary items, their amounts, and the separate or consolidated returns in which they are included;

(ii) Identify the aggregate amount to be ratably allocated, and the portion of the amount included in the separate and consolidated returns; and

(iii) Include the name and employer identification number of the common parent (if any) of each group that must take the items into account.

(b)(2)(iii) through (c) [Reserved]. For further guidance, see §1.1502-76(b)(2)(iii) through (c).

(d) *Effective date*—(1) *Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 45. Section 1.1502-95 is amended by revising paragraphs (e)(8) and (f) and adding paragraph (g) to read as follows:

§1.1502-95 Rules on ceasing to be a member of a consolidated group (or loss subgroup).

* * * * *

(e) * * *

(8) [Reserved]. For further guidance, see §1.1502-95T(e)(8).

(f) through (g) [Reserved]. For further guidance, see §1.1502-95T(f) through (g)(1).

Par. 46. Section 1.1502-95T is added to read as follows:

§1.1502-95T Rules on ceasing to be a member of a consolidated group (or loss subgroup) (temporary).

(a) through (e)(7) [Reserved]. For further guidance, see §1.1502-95(a) through (e)(7).

(8) *Reporting requirements*—(i) *Common Parent.* Except as provided in paragraph (e)(8)(iii) of this section, if a net unrealized built-in loss is allocated under paragraph (e) of §1.1502-95, the common parent must include a statement entitled,

“STATEMENT OF NET UNREALIZED BUILT-IN LOSS ALLOCATION PURSUANT TO §1.1502-95(e),” on or with its income tax return for the taxable year in which the former member(s) (or a new loss subgroup that includes that member) ceases to be a member. The statement must include—

(A) The name and employer identification number of the departing member;

(B) The amount of the remaining NUBIL balance for the taxable year in which the member departs;

(C) The amount of the net unrealized built-in loss allocated to the departing member; and

(D) A representation that the common parent has delivered a copy of the statement to the former member (or the common parent of the group of which the former member is a member) on or before the day the group files its income tax return for the consolidated return year that the former member ceases to be a member.

(ii) *Former Member.* Except as provided in paragraph (e)(8)(iii) of this section, the former member must include a statement on or with its first income tax return (or the first return in which the former member joins) that is filed after the close of the consolidated return year of the group of which the former member (or a new loss subgroup that includes that member) ceases to be a member. The statement will be identical to the statement filed by the common parent under paragraph (e)(8)(i) of this section except that instead of including the information described in paragraph (e)(8)(i)(A) of this section the former member must provide the name, employer identification number and tax year of the former common parent, and instead of the representation described in paragraph (e)(8)(i)(D) of this section the former member must represent that it has received and retained the copy of the statement delivered by the common parent as part of its records. See §1.6001-1(e).

(iii) *Exception.* This paragraph (e)(8) does not apply if the required information (other than the amount of the remaining NUBIL balance) is included in a statement of election under paragraph (f) of this section (relating to apportioning a section 382 limitation).

(f) *Filing the election to apportion the section 382 limitation and net unrealized built-in gain—*(1) *Form of the election*

to apportion—(i) *Statement.* An election under paragraph (c) of §1.1502-95 must be made in the form set forth in this paragraph (f)(1)(i). The election must be made by the common parent and the party described in paragraph (f)(2) of this section. It must be filed in accordance with paragraph (f)(3) of this section and be entitled, “THIS IS AN ELECTION UNDER §1.1502-95 TO APPORTION ALL OR PART OF THE [INSERT THE CONSOLIDATED SECTION 382 LIMITATION, THE SUBGROUP SECTION 382 LIMITATION, THE LOSS GROUP’S NET UNREALIZED BUILT-IN GAIN, OR THE LOSS SUBGROUP’S NET UNREALIZED BUILT-IN GAIN, AS APPROPRIATE] IN THE AMOUNT OF [INSERT THE AMOUNT OF THE LOSS LIMITATION OR NET UNREALIZED BUILT-IN GAIN] TO [INSERT NAME(S) AND EMPLOYER IDENTIFICATION NUMBER(S) OF THE CORPORATION (OR THE CORPORATIONS THAT COMPOSE A NEW LOSS SUBGROUP) TO WHICH ALLOCATION IS MADE].” The statement must also indicate that an agreement, as described in paragraph (f)(1)(ii) of this section, has been entered into.

(ii) *Agreement.* Both the common parent and the party described in paragraph (f)(2) of this section must sign and date the agreement. The agreement must include, as appropriate—

(A) The date of the ownership change that resulted in the consolidated section 382 limitation (or subgroup section 382 limitation) or the loss group’s (or loss subgroup’s) net unrealized built-in gain;

(B) The amount of the departing member’s (or loss subgroup’s) pre-change net operating loss carryovers and the taxable years in which they arose that will be subject to the limitation that is being apportioned to that member (or loss subgroup);

(C) The amount of any net unrealized built-in loss allocated to the departing member (or loss subgroup) under paragraph (e) of §1.1502-95, which, if recognized, can be a pre-change attribute subject to the limitation that is being apportioned;

(D) If a consolidated section 382 limitation (or subgroup section 382 limitation) is being apportioned, the amount of the consolidated section 382 limitation (or subgroup section 382 limitation) for the tax-

able year during which the former member (or new loss subgroup) ceases to be a member of the consolidated group (determined without regard to any apportionment under this section);

(E) If any net unrealized built-in gain is being apportioned, the amount of the loss group’s (or loss subgroup’s) net unrealized built-in gain (as determined under paragraph (c)(2)(ii) of §1.1502-95) that may be apportioned to members that ceased to be members during the consolidated return year;

(F) The amount of the value element and adjustment element of the consolidated section 382 limitation (or subgroup section 382 limitation) that is apportioned to the former member (or new loss subgroup) pursuant to paragraph (c) of §1.1502-95;

(G) The amount of the loss group’s (or loss subgroup’s) net unrealized built-in gain that is apportioned to the former member (or new loss subgroup) pursuant to paragraph (c) of §1.1502-95;

(H) If the former member is allocated any net unrealized built-in loss under paragraph (e) of §1.1502-95, the amount of any adjustment element apportioned to the former member that is attributable to recognized built-in gains (determined in a manner that will enable both the group and the former member to apply the principles of §1.1502-93(c)); and

(I) The name and employer identification number of the common parent making the apportionment.

(2) *Signing the agreement.* The agreement must be signed by both the common parent and the former member (or, in the case of a loss subgroup, the common parent and the loss subgroup parent) by persons authorized to sign their respective income tax returns. If the allocation is made to a loss subgroup for which an election under §1.1502-91(d)(4) is made, and not separately to its members, the agreement under this paragraph (f) must be signed by the common parent and any member of the new loss subgroup by persons authorized to sign their respective income tax returns. Each party signing the agreement must retain either the original or a copy of the agreement as part of its records. See §1.6001-1(e).

(3) *Filing of the election—*(i) *Filing by the common parent.* The election must be filed by the common parent of the group

that is apportioning the consolidated section 382 limitation (or the subgroup section 382 limitation) or the loss group's net unrealized built-in gain (or loss subgroup's net unrealized built-in gain) by including the statement on or with its income tax return for the taxable year in which the former member (or new loss subgroup) ceases to be a member.

(ii) *Filing by the former member.* An identical statement must be included on or with the first return of the former member (or the first return in which the former member, or the members of a new loss subgroup, join) that is filed after the close of the consolidated return year of the group of which the former member (or the members of a new loss subgroup) ceases to be a member.

(4) *Revocation of election.* An election statement made under paragraph (c) of §1.1502-95 is revocable only with the consent of the Commissioner.

(g) *Effective date—(1) Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 47. Section 1.1563-1 is amended by revising paragraph (c)(2) and adding paragraph (e) to read as follows:

§1.1563-1 Definition of controlled group of corporations and component members.

* * * * *

(c) * * *

(2)(i) through (iii) [Reserved]. For further guidance, see §1.1563-1T(c)(2)(i) through (iii).

* * * * *

(e) [Reserved]. For further guidance, see §1.1563-1T(e)(1).

* * * * *

Par. 48. Section 1.1563-1T is added to read as follows:

§1.1563-1T Definition of controlled group of corporations and component members (temporary).

(a) through (c)(1) [Reserved]. For further guidance, see §1.1563-1(a) through (c)(1).

(2) *Brother-sister controlled groups—*

(i) *One corporation.* If on a December 31, a corporation would, without the application of this paragraph (c)(2), be a component member of more than one brother-sister controlled group on such date, the corporation will be treated as a component member of only one such group on such date. Such corporation may elect the group in which it is to be included by including on or with its income tax return for the taxable year that includes such date a statement entitled, "STATEMENT TO ELECT CONTROLLED GROUP PURSUANT TO §1.1563-1T(c)(2)." This statement must include—

(A) A description of each of the controlled groups in which the corporation could be included. The description must include the name and employer identification number of each component member of each such group and the stock ownership of the component members of each such group; and

(B) The following representation: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF CORPORATION] ELECTS TO BE TREATED AS A COMPONENT MEMBER OF THE [INSERT DESIGNATION OF GROUP].

(ii) *Multiple corporations.* If more than one corporation would, without the application of this paragraph (c)(2), be a component member of more than one controlled group, those corporations electing to be component members of the same group must file a single statement. The statement must contain the information described in paragraph (c)(2)(i) of this section, plus the names and employer identification numbers of all other corporations designating the same group. The original statement must be included on or with the original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such return) of the corporation that, among those corporations which would (without the application of this paragraph (c)(2)) belong to more than one group, has the taxable year including such December 31 which

ends on the earliest date. That corporation must provide a copy of the statement to each other corporation included in the statement and represent in its statement that it has done so. Either the original or a copy of the statement must be retained by each corporation as part of its records. See §1.6001-1(e).

(iii) *Election—(A) Election filed.* An election filed under this paragraph (c)(2) is irrevocable and effective until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(B) *Election not filed.* In the event no election is filed in accordance with the provisions of this paragraph (c)(2), then the Internal Revenue Service will determine the group in which such corporation is to be included. Such determination will be binding for all subsequent years unless the corporation files a valid election with respect to any such subsequent year or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(c)(2)(iv) through (d) [Reserved]. For further guidance, see §1.1563-1(c)(2)(iv) through (d).

(e) *Effective date—(1) Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 49. Section 1.1563-3 is amended by revising paragraph (d)(2)(iv) and adding paragraph (e) to read as follows:

§1.1563-3 Rules for determining stock ownership.

* * * * *

(d) * * *

(2) * * *

(iv) [Reserved]. For further guidance, see §1.1563-3T(d)(2)(iv).

* * * * *

(e) [Reserved]. For further guidance, see §1.1563-3T(e)(1).

Par. 50. Section 1.1563-3T is added to read as follows:

§1.1563-3T Rules for determining stock ownership (temporary).

(a) through (d)(2)(iii) [Reserved]. For further guidance, see §1.1563-3(a) through (d)(2)(iii).

(iv) *Statement.* If the application of paragraph (d)(2)(ii) or (iii) of §1.1563-3 does not result in a corporation being treated as a component member of only one controlled group of corporations on a December 31, then such corporation will be treated as a component member of only one such group on such date. Such corporation may elect the group in which it is to be included by including on or with its income tax return a statement entitled, "STATEMENT TO ELECT CONTROLLED GROUP PURSUANT TO §1.1563-3T(d)(2)(iv)." The statement must include—

(A) A description of each of the controlled groups in which the corporation could be included. The description must include the name and employer identification number of each component member of each such group and the stock ownership of the component members of each such group; and

(B) The following representation: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF CORPORATION] ELECTS TO BE TREATED AS A COMPONENT MEMBER OF THE [INSERT DESIGNATION OF GROUP].

(v) *Election*—(A) *Election filed.* An election filed under paragraph (d)(2)(iv) of this section is irrevocable and effective until paragraph (d)(2)(ii) or (iii) of §1.1563-3 applies or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(B) *Election not filed.* In the event no election is filed in accordance with the provisions of paragraph (d)(2)(iv) of this section, then the Internal Revenue Service will determine the group in which such corporation is to be included. Such determination will be binding for all subsequent years unless the corporation files a valid election with respect to any such subsequent year or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(d)(3) [Reserved]. For further guidance, see §1.1563-3(d)(3).

(e) *Effective date*—(1) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 51. Section 1.6012-2 is amended by revising paragraph (c) and adding paragraph (k) to read as follows:

§1.6012-2 Corporations required to make returns of income.

* * * * *

(c) [Reserved]. For further guidance, see §1.6012-2T(c).

* * * * *

(k) [Reserved]. For further guidance, see §1.6012-2T(k)(1).

Par. 52. Section 1.6012-2T is added to read as follows:

§1.6012-2T Corporations required to make returns of income (temporary).

(a) through (b) [Reserved]. For further guidance, see §1.6012-2(a) through (b).

(c) *Insurance companies*—(1) *Domestic life insurance companies*—(i) *In general.* A life insurance company subject to tax under section 801 shall make a return on Form 1120L. Except as provided in paragraph (c)(4) of this section, such company shall file with its return—

(A) A copy of its annual statement which shows the reserves used by the company in computing the taxable income reported on its return; and

(B) A copy of Schedule A (real estate) and of Schedule D (bonds and stocks), or any successor thereto, of such annual statement.

(ii) *Mutual savings banks.* Mutual savings banks conducting life insurance business and meeting the requirements of section 594 are subject to partial tax computed on Form 1120 and partial tax computed on Form 1120L. The Form 1120L is attached as a schedule to Form 1120, together with the annual statement and schedules required to be filed with Form 1120L.

(2) *Domestic nonlife insurance companies.* Every domestic insurance company other than a life insurance company shall make a return on Form 1120PC. This includes organizations described in section 501(m)(1) that provide commercial-type insurance and organizations described in section 833. Except as provided in paragraph (c)(4) of this section, such company shall file with its return a copy of its annual statement (or a *pro forma* annual statement), including the underwriting and investment exhibit for the year covered by such return.

(3) *Foreign insurance companies.* The provisions of paragraphs (c)(1) and (c)(2) of this section concerning the returns and statements of insurance companies subject to tax under section 801 or section 831 also apply to foreign insurance companies subject to tax under those sections, except that the copy of the annual statement required to be submitted with the return shall, in the case of a foreign insurance company that is not required to file an annual statement, be a copy of the *pro forma* annual statement relating to the United States business of such company.

(4) *Exception for insurance companies filing their Federal income tax returns electronically.* If an insurance company described in paragraph (c)(1), (c)(2), or (c)(3) of this section files its Federal income tax return electronically, it should not include on or with such return its annual statement (or *pro forma* annual statement), or any portion thereof. Such statement must be available at all times for inspection by authorized Internal Revenue Service officers or employees and retained for so long as such statements may be material in the administration of any internal revenue law. See §1.6001-1(e).

(5) *Definition.* For purposes of this section, the term *annual statement* means the annual statement, the form of which is approved by the National Association of Insurance Commissioners (NAIC), which is filed by an insurance company for the year with the insurance departments of States, Territories, and the District of Columbia. The term annual statement also includes a *pro forma* annual statement if the insurance company is not required to file the NAIC annual statement.

(d) through (j) [Reserved]. For further guidance, see §1.6012-2(d) through (j).

(k) *Effective date*—(1) *Applicability date*. This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such origi-

nal return) timely filed on or after May 30, 2006.

(2) *Expiration date*. The applicability of this section will expire on May 26, 2009.

Par. 53. For each entry in the “Location” column of the following table, remove the language in the “Remove” column and add the language in the “Add” column in its place:

Location	Remove	Add
The last sentence of the introductory text to §1.302-4	The following rules shall be applicable in determining whether the specific requirements of section 302(c)(2) are met:	The rules described in paragraph (a) of §1.302-4T and in paragraphs (b) through (g) of this section apply in determining whether the specific requirements of section 302(c)(2) are met.
§1.338(h)(10)-1(f)	§1.331-1(d), and §1.332-6	§1.331-1T(d) and §1.332-6T
The last sentence of §1.382-2T(h)(4)(vi)(B)	paragraph (a)(2)(ii) of this section	paragraph (a) of §1.382-11T
The first sentence of §1.382-6(b)(2)(i)	§1.382-2T(a)(2)(ii)	§1.382-11T(a)
The second sentence of §1.382-8(a)	paragraph (c) of this section	paragraphs (c)(1), (c)(3), (c)(4) and (c)(5) of this section and paragraph (c)(2) of §1.382-8T
The third sentence of §1.382-8(a)	paragraph (c) of this section	paragraphs (c)(1), (c)(3), (c)(4) and (c)(5) of this section and paragraph (c)(2) of §1.382-8T
§1.382-8(c)(3)	paragraph (c)(2) of this section	paragraph (c)(2) of §1.382-8T
The first sentence of §1.382-8(c)(4)	paragraphs (c)(1), (2), and (3) of this section	paragraphs (c)(1) and (c)(3) of this section and paragraph (c)(2) of §1.382-8T
§1.382-8(c)(5)	this paragraph (c)	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of §1.382-8T
The fifth sentence of §1.382-8(f)	paragraph (c) of this section	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of §1.382-8T
§1.382-8(g), <i>Example</i> (1)(b)(2)	paragraph (c) of this section	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of §1.382-8T
The second sentence of §1.382-8(g), <i>Example</i> (1)(c)	paragraph (c) of this section	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of §1.382-8T
§1.382-8(g), <i>Example</i> (2)(c)	paragraph (c)(2) of this section	paragraph (c)(2) of §1.382-8T
The first sentence of §1.382-8(g), <i>Example</i> (2)(e)	paragraph (c)(2) of this section	paragraph (c)(2) of §1.382-8T
§1.382-8(g), <i>Example</i> (3)(b)	paragraph (c)(2) of this section	paragraph (c)(2) of §1.382-8T
§1.382-8(g), <i>Example</i> (3)(c)(1)(B)	paragraphs (c)(1) and (2) of this section	paragraph (c)(1) of this section and paragraph (c)(2) of §1.382-8T
The second sentence of §1.382-8(g), <i>Example</i> (4)(c)	paragraph (c)(2) of this section	paragraph (c)(2) of §1.382-8T

Location	Remove	Add
The second sentence of §1.382-8(g), <i>Example (5)(c)</i>	paragraph (c)(2) of this section	paragraph (c)(2) of §1.382-8T
The first sentence of §1.1502-32(b)(4)(v)(A)	paragraph (b)(4)(iv) of this section	paragraph (b)(4)(iv) of §1.1502-32T
The first sentence of §1.1502-32(b)(4)(v)(B)	paragraph (b)(4)(iv) of this section	paragraph (b)(4)(iv) of §1.1502-32T
§1.1502-35(c)(4)(ii)(B)	§1.1502-76(b)(2)(ii)(D)	§1.1502-76T(b)(2)(ii)(D)
§1.1502-76(b)(2)(ii)(A)(2)	paragraph (b)(2)(ii)(D) of this section	paragraph (b)(2)(ii)(D) of §1.1502-76T
§1.1502-92(e)(1)	§1.382-2T(a)(2)(ii)	§1.382-11T(a)
The first sentence of §1.1502-92(e)(2)	§1.382-2T(a)(2)(ii)	§1.382-11T(a)
The first sentence of §1.1502-94(d)	§1.382-2T(a)(2)(ii)	§1.382-11T(a)
The second sentence of §1.1502-94(d)	§1.382-2T(a)(2)(ii)	§1.382-11T(a)
The last sentence of §1.1502-95(b)(3)	paragraph (f) of this section	paragraph (f) of §1.1502-95T
The last sentence of §1.1563-1(c)(2)(iv), <i>Example (1)</i>	subdivision (ii) of this subparagraph	paragraph (c)(2)(i) of §1.1563-1T
The last sentence of §1.1563-1(c)(2)(iv), <i>Example (1)</i>	the district director with audit jurisdiction of N's return	the Internal Revenue Service
The third sentence of §1.1563-1(c)(2)(iv), <i>Example (2)</i>	subdivision (iii) of this subparagraph	paragraph (c)(2)(ii) of §1.1563-1T
The third sentence of §1.1563-1(c)(2)(iv), <i>Example (2)</i>	the district director with audit jurisdiction of the return of the corporation whose taxable year ends on the earliest date	the Internal Revenue Service
The last sentence of §1.1563-1(c)(2)(iv), <i>Example (2)</i>	district director	Internal Revenue Service
The second sentence of §1.1563-3(d)(2)(i)	subdivisions (ii), (iii), and (iv) of this subparagraph	paragraphs (d)(2)(ii) and (iii) of this section, and paragraph (d)(2)(iv) of §1.1563-3T
The first sentence of §1.6043-2(a)	§1.332-6(b), 1.368-3(a), or 1.1081-11	§1.332-6T(a), §1.368-3T(a), or §1.1081-11T
The first sentence of §301.6011-5T(a) (twice)	§1.6012-2	paragraphs (a), (b) and (d) through (j) of §1.6012-2, and paragraph (c) of §1.6012-2T

PART 602—OMB CONTROL
NUMBERS UNDER THE PAPERWORK
REDUCTION ACT

Par. 54. The authority citation for part
602 continues to read as follows:

Authority: 26 U.S.C. 7805.
Par. 55. In §602.101, paragraph (b) is
amended to read as follows:
1. The following entries to the table are
removed:

§602.101 OMB Control numbers.

* * * * *
(b) * * * *

CFR part or section where identified or described	Current OMB control No.
* * * * *	
1.332-6	1545-2019
1.382-11	1545-2019
1.351-3	1545-2019
1.355-5	1545-2019

CFR part or section where identified or described	Current OMB control No.
1.368-3	1545-2019
1.1081-11	1545-2019
* * * * *	

2. The following entries are added in numerical order to the table: §602.101 OMB Control numbers. (b) * * *

CFR part or section where identified or described	Current OMB control No.
* * * * *	
1.302-2T	1545-2019
1.302-4T	1545-2019
1.331-1T	1545-2019
1.332-6T	1545-2019
1.338-10T	1545-2019
1.351-3T	1545-2019
1.355-5T	1545-2019
1.368-3T	1545-2019
1.381(b)-1T	1545-2019
1.382-8T	1545-2019
1.382-11T	1545-2019
1.1081-11T	1545-2019
1.1221-2T	1545-2019
1.1502-13T	1545-2019
1.1502-31T	1545-2019
1.1502-32T	1545-2019
1.1502-33T	1545-2019
1.1502-35T	1545-2019
1.1502-76T	1545-2019
1.1502-95T	1545-2019
1.1563-1T	1545-2019
1.1563-3T	1545-2019
1.6012-2T	1545-2019
* * * * *	

Mark E. Matthews,
Deputy Commissioner for
Services and Enforcement.

Approved May 19, 2006.

Eric Solomon,
Acting Deputy Assistant Secretary
of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on May 26, 2006, 8:45 a.m., and published in the issue of the Federal Register for May 30, 2006, 71 F.R. 30591)

Section 1563.—Definitions and Special Rules

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens.

They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

Section 2032A.—Valuation of Certain Farm, etc., Real Property

26 CFR 20.2032A-4: Method of valuing farm real property.

Special use value; farms; interest rates. The 2006 interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A of the Code are listed for estates of decedents.

Rev. Rul. 2006-32

This revenue ruling contains a list of the average annual effective interest rates on new loans under the Farm Credit System. This revenue ruling also contains a list of the states within each Farm Credit System Bank Chartered Territory.

Under § 2032A(e)(7)(A)(ii) of the Internal Revenue Code, rates on new Farm Credit System Bank loans are used in computing the special use value of real property used as a farm for which an election is made under § 2032A. The rates in this revenue ruling may be used by estates that value farmland under § 2032A as of a date in 2006.

Average annual effective interest rates, calculated in accordance with

§ 2032A(e)(7)(A) and § 20.2032A-4(e) of the Estate Tax Regulations, to be used under § 2032A(e)(7)(A)(ii), are set forth in the accompanying Table of Interest Rates (Table 1). The states within each Farm Credit System Bank Chartered Territory are set forth in the accompanying Table of Farm Credit System Bank Chartered Territories (Table 2).

Rev. Rul. 81-170, 1981-1 C.B. 454, contains an illustrative computation of an average annual effective interest rate. The rates applicable for valuation in 2005 are in Rev. Rul. 2005-41, 2005-28 I.R.B. 69. For rate information for years prior to 2005, see Rev. Rul. 2004-63, 2004-2 C.B. 6, and other revenue rulings that are referenced therein.

DRAFTING INFORMATION

The principal author of this revenue ruling is Lane Damazo of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Lane Damazo at (202) 622-3090 (not a toll-free call).

REV. RUL. 2006-32 TABLE 1

TABLE OF INTEREST RATES

(Year of Valuation 2006)

Farm Credit System Bank Servicing State in Which Property is Located	Rate
AgFirst, FCB	7.13
AgriBank, FCB	6.02
CoBank, ACB	5.19
Texas, FCB	5.76
U.S. AgBank, FCB	5.73

REV. RUL. 2006-32 TABLE 2

TABLE OF FARM CREDIT SYSTEM BANK CHARTERED TERRITORIES

Farm Credit System Bank	Location of Property
AgFirst, FCB	Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, West Virginia.
AgriBank, FCB	Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Wisconsin, Wyoming.
CoBank, ACB	Alaska, Connecticut, Idaho, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington.
Texas, FCB	Alabama, Louisiana, Mississippi, Texas.
U.S. Agbank, FCB.....	Arizona, California, Colorado, Hawaii, Kansas, New Mexico, Nevada, Oklahoma, Utah.

Section 6012.—Persons Required to Make Returns of Income

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal in-

come tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

Section 6166.—Extension of Time for Payment of Estate Tax Where Estate Consists Largely of Interest in Closely Held Business

26 CFR 20.6166-2: Definition of an interest in a closely held business.

Real property interests; closely held business. This ruling updates the guidance provided by Rev. Ruls. 75-365, 75-366,

and 75-367, and provides certain safe harbors and a non-exclusive list of factors that are likely to be relevant in determining whether a deceased owner's activities with regard to certain real property were sufficiently active to support a finding that the real property interest constitutes a closely held business interest for purposes of section 6166 of the Code. Rev. Rul. 75-365 revoked and Rev. Rul. 75-367 revoked in part.

Rev. Rul. 2006-34

ISSUE

Whether the real property interests described in the situations below constitute interests in a closely held business for purposes of section 6166 of the Internal Revenue Code.

FACTS

In each situation, the real property interests are included in the decedent's gross estate and aggregate in value more than 35 percent of the decedent's adjusted gross estate within the meaning of section 6166(b)(6). Further, in each situation the only assets that might be part of a closely held business are the interests described. In each situation, the eligibility requirements of section 6166(b) regarding the number of partners, members, or shareholders or the percentage of capital interest in the partnership or LLC or voting stock in the corporation are satisfied.

Situation 1. A died on January 1, 2005. At the time of death, A owned a ten store strip mall titled in A's name. A personally handled the day-to-day operation, management and maintenance of the strip mall. A also personally handled most repairs. When A was unable to personally perform a repair, A hired a third party independent contractor. A selected the contractor and reviewed and approved the work performed.

Situation 2. B died on February 1, 2005. At the time of death, B owned a small office park titled in B's name. The office park consisted of five separate two-story buildings, each of which had multiple tenants. B hired DEF Management Corporation (DEF), a property management company in which B had no ownership interest, to lease, manage, and maintain the office park, and B relied entirely on DEF

to provide all necessary services. The primary duties of DEF's employees consisted of advertising to attract new tenants, showing the property to prospective tenants, negotiating and administering leases, collecting the monthly rent, and arranging for independent contractors to provide all necessary services to maintain the buildings and grounds of the office park, including snow removal, security, and janitorial services. DEF provided a monthly accounting statement to B, along with a check for the rental income, net of expenses and fees.

Situation 3. Same as Situation 2 except that B owned 20 percent in value of the stock of DEF.

Situation 4. C died on April 1, 2005. At the time of death, C's assets included the one percent general partner interest and a 20 percent limited partnership interest in a limited partnership. The limited partnership owned three strip malls that, collectively, constituted 85 percent of the value of the limited partnership's assets. The partnership agreement required C, as the general partner, to provide the limited partnership with all services necessary to operate the limited partnership's business, including daily maintenance to and repairs of the strip malls. From 1992 until death, C received an annual salary from the limited partnership for C's services as general partner. In performance of C's obligations under the limited partnership agreement, C (either personally or with the assistance of employees or agents) performed substantial management functions, including collecting rental payments and negotiating leases, performing daily maintenance and repairs (or hiring, reviewing and approving the work of third party independent contractors for such work), and making decisions regarding periodic renovations of the three strip malls.

Situation 5. D died on May 1, 2005. At the time of death, D owned 100 percent of the stock in MNO Corporation (MNO), a dealership in the business of selling automobiles, automotive parts and related supplies, and repair services. D made all decisions regarding MNO, including the approval of all advertising and marketing promotions, management and acquisition of inventory, and matters relating to dealership personnel. D also supervised all employees of MNO. In addition to the stock of MNO, D directly owned Real Property P. Real Property P was constructed for

MNO and contained unique features tailored to an automobile dealership, including a showroom and office space and areas for servicing automobiles and storing inventory. D leased Real Property P to MNO under a net lease, and MNO's employees performed all maintenance of and repairs to Real Property P.

LAW

Section 6166(a)(1) of the Code permits an executor to elect to pay part or all of the estate tax imposed by section 2001 in two or more (but not exceeding ten) equal installments if a decedent was a citizen or resident of the United States on the date of death, and if the value of an interest in a closely held business (the "closely held business amount" as defined in section 6166(b)(5)) which is included in the decedent's gross estate exceeds 35 percent of the adjusted gross estate.

Section 6166(b)(1) defines the term "interest in a closely held business" to mean:

- A. an interest as a proprietor in a trade or business carried on as a proprietorship;
- B. an interest as a partner in a partnership carrying on a trade or business, if— (i) 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, or (ii) such partnership had 45 or fewer partners; or
- C. stock in a corporation carrying on a trade or business if— (i) 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or (ii) such corporation had 45 or fewer shareholders.

I.R.C. § 6166(b)(1). The determination as to whether an interest qualifies as an interest in a closely held business under section 6166(b)(1) shall be made as of the time immediately before the decedent's death. I.R.C. § 6166(b)(2)(A). Thus, a decedent must own an interest in a closely held business immediately before death to be eligible for an extension of time for payment under section 6166.

Under section 6166(b)(9)(A), for purposes of section 6166(a)(1) and determining the closely held business amount, the value of an interest in a business does not include the value of that portion of the interest that is attributable to passive assets

held by the business. The term “passive asset” is defined in section 6166(b)(9)(B)(i) as any asset other than an asset used in carrying on a trade or business.

Revenue Ruling 75-366, 1975-2 C.B. 472, involved a decedent whose gross estate included farm real estate operated by tenant farmers. The decedent paid 40 percent of the expenses, received 40 percent of the crops, and actively participated in important management decisions of the tenant farms. The decedent made almost daily visits to inspect and discuss farm operations, and occasionally delivered supplies to the tenants. The ruling held that farming under these circumstances was a productive enterprise like a manufacturing enterprise and was distinguishable from the mere management of investment assets. Therefore, the decedent’s farm assets constituted an interest in a closely held business for purposes of section 6166.

Revenue Ruling 75-365, 1975-2 C.B. 471, also involved a decedent’s interest in real estate. In that ruling, the Service considered a situation in which the decedent individually maintained a fully equipped business office to collect rental payments on commercial and farm rental properties, receive payments on notes receivable, negotiate leases, make occasional loans, and direct by contract the maintenance of the properties. The ruling held that the decedent was merely an owner managing investment assets to obtain the income ordinarily expected from them, and was not conducting a trade or business. Therefore, the commercial and farm rental properties and notes receivable included in the decedent’s gross estate did not constitute an interest in a closely held business for purposes of section 6166.

Revenue Ruling 75-367, 1975-2 C.B. 472, held that a decedent’s ownership of 100 percent of the stock of an electing small business corporation that built homes on land owned and developed by the decedent, together with a business office and warehouse used both by the corporation and by the decedent in the land development activities constituted an interest in a closely held business. The ruling held, however, that the eight homes that were owned by the decedent and rented to tenants and for which the decedent collected rents, made the mortgage payments, and performed necessary

repairs and maintenance, did not constitute an interest in a closely held business because the decedent’s interest in those homes merely represented an investment.

ANALYSIS

In order for an interest in a business to qualify as an interest in a closely held business under section 6166, a decedent must conduct an active trade or business, or must hold an interest in a partnership, LLC, or corporation that itself carries on an active trade or business. Based on the definition of a passive asset in section 6166(b)(9)(B)(i), section 6166 applies only with regard to an active trade or business, as distinguished from the mere management of investment assets.

In determining whether the activities of the decedent, partnership, LLC or corporation constitute an active trade or business, the activities of agents and employees of the decedent, the partnership, LLC or corporation are also taken into consideration. The fact that some of the activities are conducted by third parties such as independent contractors who are neither agents nor employees of the decedent, partnership, LLC or corporation, will not prevent the business from qualifying as an active trade or business so long as these third-party activities are not of such a nature that the activities of the decedent, partnership, LLC or corporation (and their respective agents and employees) are reduced to the level of merely holding investment property.

Often, day-to-day real estate operations and activities are performed by independent contractors, such as property management companies. If a decedent, partnership, LLC, or corporation uses an unrelated property management company to perform most of the activities associated with the real estate interests, that fact suggests that an active trade or business does not exist.

To determine whether a decedent’s interest in real property is an interest in an asset used in an active trade or business, the Service will consider all the facts and circumstances, including the activities of agents and employees, the activities of management companies or other third parties, and the decedent’s ownership interest in any management company or other third party. The Service will consider the following nonexclusive list of factors:

- The amount of time the decedent (or agents and employees of the decedent, partnership, LLC, or corporation) devoted to the trade or business;
- Whether an office was maintained from which the activities of the decedent, partnership, LLC, or corporation were conducted or coordinated, and whether the decedent (or agents and employees of the decedent, partnership, LLC, or corporation) maintained regular business hours for that purpose;
- The extent to which the decedent (or agents and employees of the decedent, partnership, LLC, or corporation) was actively involved in finding new tenants and negotiating and executing leases;
- The extent to which the decedent (or agents and employees of the decedent, partnership, LLC, or corporation) provided landscaping, grounds care, or other services beyond the mere furnishing of leased premises;
- The extent to which the decedent (or agents and employees of the decedent, partnership, LLC, or corporation) personally made, arranged for, performed, or supervised repairs and maintenance to the property (whether or not performed by independent contractors), including without limitation painting, carpentry, and plumbing; and
- The extent to which the decedent (or agents and employees of the decedent, partnership, LLC, or corporation) handled tenant repair requests and complaints.

No single factor is dispositive of whether a decedent’s activities with respect to the real property (or the activities of a partnership, LLC, or corporation through which decedent owns the real property) constitute an interest in a closely held business for purposes of section 6166.

HOLDINGS

(1) In *Situation 1*, A provided significant services to the strip mall tenants. A personally handled the day-to-day operation, management and maintenance of

the strip mall. A's activities went beyond those of a mere investor collecting profits from a passive asset. Moreover, even in situations in which A hired independent contractors to perform repairs that A could not perform personally, A was involved in the selection of the contractors and reviewed and approved the work performed. Under these circumstances, the use of independent contractors on occasions when A could not personally perform the work does not prevent A's activities from rising to the level of the conduct of an active trade or business. Thus, A's ownership of the strip mall qualifies as an interest in a closely held business for purposes of section 6166. (The result would be the same if the strip mall had instead been held in a single-member LLC owned by A, and the LLC were disregarded as an entity that is separate from its owner under §§301.7701-1 through 3 of the Procedure and Administration Regulations.)

(2) In *Situation 2*, in determining whether B was a proprietor carrying on an active trade or business with respect to B's interest in the office park, the activities of DEF Management Corporation (DEF) and its relationship with B are taken into account. DEF and its employees provided all necessary services for B's office park. B had no ownership interest in DEF. B's reliance on DEF to perform all necessary services, B's lack of any significant participation in the management or oversight of the property, and B's lack of any ownership interest in DEF are all factors that weigh heavily against a finding that the office park was used by B in an active trade or business. Thus, B was not a proprietor in an active trade or business and B's interest in the office park does not qualify as an interest in a closely held business for purposes of section 6166.

(3) In *Situation 3*, DEF provided all necessary services with regard to the man-

agement and maintenance of the office park, including advertising to attract new tenants, showing the property to prospective tenants, negotiating and administering leases, collecting the monthly rent, and arranging for third party independent contractors to provide all necessary services to maintain the buildings and grounds of the office park, including snow removal, security, and janitorial services. These activities are sufficient to conclude that DEF was actively managing the office park. Because B owned a significant interest in DEF, the activities of DEF with regard to the office park allow B's interest in the office park to qualify as an interest in a closely held business for purposes of section 6166.

(4) In *Situation 4*, the determination of whether the limited partnership was carrying on a trade or business for purposes of section 6166 is made with reference to the partnership's activities. Because the limited partnership, rather than C, owned the interest in the strip malls, the nature and level of the activities of the limited partnership must be evaluated. The limited partnership, acting through its general partner C, handled the day-to-day operations and management of the strip malls. The activities of C on behalf of the limited partnership included (either personally or with the assistance of employees or agents) performing daily maintenance of and repairs to the strip malls (or hiring, reviewing and approving the work of third party independent contractors for such work), collecting rental payments, negotiating leases, and making decisions regarding periodic renovations of the strip malls. Thus, the limited partnership carried on an active trade or business. Because the strip malls were used in carrying on the partnership's active trade or business, they are not passive assets under section 6166(b)(9) and their value is not excluded from the value

of C's interest in the partnership for purposes of section 6166. C's interest in the limited partnership qualifies as an interest in a closely held business for purposes of section 6166. (Because C owned at least 20 percent of the partnership, the conclusion would be the same even if C's activities were instead performed by another employee, partner or agent of the partnership).

(5) In *Situation 5*, MNO was engaged in an automobile dealership business. Thus, MNO was conducting an active trade or business at the time of D's death. Consequently, D's 100 percent stock interest in MNO qualifies as an interest in a closely held business. In addition, Real Property P was used exclusively in the business of MNO under a net lease from D. As in *Situation 3*, because D owned a significant interest in MNO, whose activities with regard to Real Property P constituted active management, D's interest in Real Property P also qualifies as an interest in a closely held business.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 75-365, 1975-2 C.B. 471, is revoked, and the portion of Rev. Rul. 75-367, 1975-2 C.B. 472, relating to the eight rental homes is revoked.

DRAFTING INFORMATION

The principal author of this revenue ruling is Tracey B. Leibowitz of the Office of the Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). For further information regarding this revenue ruling, contact Laura R. Urich at (202) 622-4940 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Deduction for Energy Efficient Commercial Buildings

Notice 2006-52

SECTION 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the deduction for energy efficient commercial buildings under § 179D of the Internal Revenue Code. Specifically, this notice sets forth a process that allows a taxpayer who owns, or is a lessee of, a commercial building and installs property as part of the commercial building's interior lighting systems, heating, cooling, ventilation, and hot water systems, or building envelope to obtain a certification that the property satisfies the energy efficiency requirements of § 179D(c)(1) and (d). This notice also provides for a public list of software programs that must be used in calculating energy and power consumption for purposes of § 179D. The Internal Revenue Service and the Treasury Department expect that the rules set forth in this notice will be incorporated in regulations.

SECTION 2. BACKGROUND

.01 *In General.* Section 1331 of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005), enacted § 179D of the Code, which provides a deduction with respect to energy efficient commercial buildings. Section 179D(a) allows a deduction to a taxpayer for part or all of the cost of energy efficient commercial building property that the taxpayer places in service after December 31, 2005, and before January 1, 2008. (See section 2.02 of this notice.) Sections 179D(d)(1) and 179D(f) allow a deduction to a taxpayer for part or all of the cost of certain partially qualifying commercial building property that the taxpayer places in service after December 31, 2005, and before January 1, 2008. (See sections 2.03, 2.04, and 2.05 of this notice.) For purposes of this notice partially qualifying commercial building property is property that would be energy efficient commercial building property but for the failure to achieve the 50-percent reduction in energy and power

costs required under section 2.02(1)(c) of this notice.

.02 *Energy Efficient Commercial Building Property.*

(1) *In General.* Energy efficient commercial building property is depreciable property that satisfies each of the following conditions:

(a) The property is installed on or in any building that is located in the United States and is within the scope of Standard 90.1-2001. (See section 5.02 of this notice for the description of buildings within the scope of Standard 90.1-2001 and section 5.06 of this notice for the complete description of Standard 90.1-2001.)

(b) The property is installed as part of—

(i) the interior lighting systems,

(ii) the heating, cooling, ventilation, and hot water systems, or

(iii) the building envelope.

(c) It is certified that the interior lighting systems, heating, cooling, ventilation, and hot water systems, and building envelope that have been incorporated into the building, or that the taxpayer plans to incorporate into the building subsequent to the installation of such property, will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by 50 percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001. The required 50-percent reduction must be accomplished solely through energy and power cost reductions for the heating, cooling, ventilation, hot water, and interior lighting systems. Reductions in any other energy uses, such as receptacles, process loads, refrigeration, cooking, and elevators, are not taken into account in determining whether the 50-percent reduction is achieved.

(2) *Maximum Amount of Deduction.*

(a) *In General.* The deduction for the cost of energy efficient commercial building property installed on or in a building shall not exceed the excess (if any) of—

(i) the product of \$1.80 and the square footage of the building, over

(ii) the aggregate amount of the § 179D deductions allowed with respect to the building for all prior taxable years.

(b) *Application to Multiple Taxpayers.*

If two or more taxpayers install energy efficient commercial building property on or in the same building, the aggregate amount of the § 179D deductions allowed to all such taxpayers with respect to the building shall not exceed the amount determined under section 2.02(2)(a) of this notice.

.03 *Partially Qualifying Property: Energy Efficient Lighting Property.*

(1) *In General.* Energy efficient lighting property is partially qualifying property, within the meaning of section 2.01 of this notice, that is subject to either the permanent rule in section 2.03(1)(a) of this notice or the interim rule in section 2.03(1)(b) of this notice.

(a) *Permanent Rule.* Partially qualifying property is subject to the permanent rule if it is installed as part of the interior lighting systems of a building and it is certified that the interior lighting systems that have been incorporated into the building, or that the taxpayer plans to incorporate into the building subsequent to the installation of such property, will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by 16²/₃ percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001. The required 16²/₃-percent reduction must be accomplished solely through energy and power cost reductions for the heating, cooling, ventilation, hot water, and interior lighting systems. Reductions in any other energy uses, such as receptacles, process loads, refrigeration, cooking, and elevators, are not taken into account in determining whether the 16²/₃-percent reduction is achieved.

(b) *Interim Rule.* Partially qualifying property, within the meaning of section 2.01 of this notice, is subject to the interim rule if it is not subject to the permanent rule in section 2.03(1)(a) of this notice, if it is installed as part of the interior lighting systems of a building before the date on which final regulations under section 179D are published in the Federal Register, and it is certified that the interior lighting systems that have been incorporated into the build-