Part III. Administrative, Procedural, and Miscellaneous

Social Security Contribution and Benefit Base for 2004

Notice 2003–66

Under authority contained in the Social Security Act ("the Act"), the Commissioner, Social Security Administration, has determined and announced (68 F.R. 60437, dated October 22, 2003) that the contribution and benefit base for remuneration paid in 2004, and self-employment income earned in taxable years beginning in 2004 is $87,900.

"Old-Law" Contribution and Benefit Base

General

The "old-law" contribution and benefit base for 2004 is $65,100. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. We compute the base under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(a) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Social Security Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the "old-law" base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2004, this threshold is $1,400. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold amount for 2004 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2002 to that for 1993. If the resulting amount is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold amount ($1,000) by the ratio of the national average wage index for 2002 ($33,252.09) to that for 1993 ($23,132.67) produces the amount of $1,437.45. We then round this amount to $1,400. Accordingly, the domestic employee coverage threshold amount is $1,400 for 2004.

(Filed by the Office of the Federal Register on October 21, 2003, 8:45 a.m., and published in the issue of the Federal Register for October 22, 2003, 68 F.R. 60437)

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: §§ 171, 702, 704, 706, 708, 851, 852, 1275, 6229, 6231, 6233, 6698, 6722; 1.706–1, 1.6001–1(a), 1.6031(a)–1T.)

Rev. Proc. 2003–84

SECTION 1. PURPOSE

This revenue procedure allows certain partnerships that invest in tax-exempt obligations to make an election that enables the partners to take into account monthly the inclusions required under §§ 702 and 707(c) of the Internal Revenue Code and provides rules for partnership income tax reporting under § 6031 for such partnerships.

SECTION 2. BACKGROUND

A partnership may be used to create the economic equivalent of a variable-rate tax-exempt bond. To create this instrument, a sponsor purchases a tax-exempt obligation and transfers the tax-exempt obligation to an entity that qualifies as a partnership for federal tax purposes (tax-exempt-bond partnership). The tax-exempt-bond partnership issues two classes of equity interests: interests that are entitled to a preferred variable return on its capital (variable-rate interests) and interests that are entitled to all of the remaining income of the partnership (inverse interest). The variable return on the variable-rate interests tracks current short-term exempt yields. Under § 702(b), tax-exempt interest income received by a partnership retains its character when the partnership allocates the income to a partner.

Under § 706(a), a partner generally includes in income for a taxable year the partner's allocable share of items of partnership income, gain, loss, deduction, and credit for the partnership's taxable year ending within or with the partner's taxable year. A partner must also include in income for a taxable year guaranteed payments under § 707(c) that are taken into account by the partnership under its method of accounting in the partnership's taxable year ending within or with the partner's taxable year. Moreover, for each taxable year in which a partnership has income, deductions, or credits, § 6031(a) and (b) requires the partnership to file a Form 1065, *U.S. Return of Partnership Income*, and to issue Schedules K–1 (Form 1065) to each partner.

Annual inclusion of income under § 706(a) can be incompatible with the needs of money market funds and of medium- and long-term bond funds that invest in obligations that produce interest that is exempt from tax. For example, if a regulated investment company's (RIC's) taxable year does not correspond to the taxable year of a tax-exempt-bond partnership in which it holds an interest, the RIC

may not be allocated sufficient tax-exempt interest income from the partnership to pay exempt-interest dividends quarterly. *See* § 852.

To resolve this problem, many tax-exempt-bond partnerships attempted to make an election under § 761(a) to be excluded from the provisions of subchapter K. A tax-exempt-bond partnership is not eligible to elect to be wholly or partially excluded from subchapter K, however, and an attempted election has no effect. Two of the requirements for eligibility to make an election under § 761(a) are that the partners must own the partnership property as co-owners and the partners must be able to compute their income without the necessity of computing partnership taxable income. *See* § 1.761–2(a)(1) and (2) of the Income Tax Regulations. If a business entity (classified as a partnership) owns a tax-exempt bond and issues membership interests that apportion the benefits and burdens of that bond to its members in a manner that differs significantly from direct investment in the bond, the holders of those membership interests do not satisfy the requirement that they own the partnership property as co-owners. *Cf.* § 301.7701–4(c) of the Procedure and Administration Regulations. Moreover, if one class of partners has a right to partnership income that is superior to the right of another class of partners, then the net partnership income or loss allocated to the partners with inferior rights to partnership income can be determined only by computing the net income or loss of the partnership and then by reducing that net income by income allocable to partners with superior rights to partnership income. Such a partnership does not meet the requirement of § 1.761–2(a)(1) that the members of the organization be able to compute their incomes without the necessity of computing partnership income.

To assist tax-exempt-bond partnerships to meet the needs of the market for tax-exempt obligations within the requirements of the Internal Revenue Code, the Internal Revenue Service (Service) has issued two revenue procedures. Rev. Proc. 2002–16, 2002–1 C.B. 572, was issued to allow money market fund partners in tax-exempt-bond partnerships to take into account on a monthly basis their distributive shares of partnership items (monthly closing) if the partnership made an effective election under that revenue procedure (monthly closing election).

Rev. Proc. 2002–68, 2002–2 C.B. 753, modified and superseded Rev. Proc. 2002–16 to extend the monthly closing election to all partners in tax-exempt-bond partnerships and established a transition rule. The transition rule provides that for any taxable year beginning before January 1, 2004, the Service will not challenge a partnership's or a partner's tax treatment that is consistent with an election to be excluded from the provisions of subchapter K under § 761(a), provided that the partnership would be an eligible partnership as defined in Rev. Proc. 2002–68 and the partners' inclusion of income, gain, loss, deduction and credits is consistent with that permitted under the revenue procedure.

In Rev. Proc. 2002–68, the Service also requested comments on simplified income tax reporting procedures for some or all of the eligible tax-exempt-bond partnerships. This revenue procedure is issued in response to comments received.

SECTION 3. SUMMARY OF MAJOR CHANGES

This revenue procedure modifies and supersedes Rev. Proc. 2002–68 by making the following changes:

.01 Section 4 of this revenue procedure expands the definition of tax-exempt-bond partnerships that are eligible to make a monthly closing election and provides that all partners must consent to the election.

.02 Section 5.01 of this revenue procedure provides that a monthly closing election is made by including a binding provision to that effect in the partnership's governing documents.

.03 Section 8 of this revenue procedure provides that a partnership that has a monthly closing election in effect for the partnership's entire taxable year and that meets the other requirements of section 8 of this revenue procedure is not required to file a Form 1065 or to issue Schedules K–1 (Form 1065) to its partners for the taxable year.

.04 Section 9.02(3) of this revenue procedure provides grandfathering rules.

SECTION 4. SCOPE

This revenue procedure applies to eligible partnerships (described in section 4.01 of this revenue procedure) that make a monthly closing election (described in section 5 of this revenue procedure).

.01 *Eligible Partnership*. An entity is an eligible partnership for a calendar month if all of the following conditions are met:

(1) As of the election test date and as of every operational test date that occurs on or before the end of such calendar month, the partnership satisfies both the income test and the expense test. The test dates are described in section 4.05 of this revenue procedure, and the income test and the expense test are described in section 4.02 and section 4.03, respectively.

(2) The entity is a partnership for federal tax purposes;

(3) All allocations of income, gain, loss, deduction, and credit of the partnership are made in accordance with § 704(b); and

(4) A written partnership agreement (or other governing document) provides that —

(a) the entity is making the monthly closing election under this revenue procedure; and,

(b) all partners consent to the election.

.02 *Income test*. At least 95 percent of the partnership's gross income (computed without regard to items described in section 4.04 of this revenue procedure) is or is reasonably expected to be from:

(1) interest on tax-exempt obligations as defined in § 1275(a)(3) and § 1.1275–1(e);

(2) exempt-interest dividends as defined in § 852(b)(5) that are paid by a RIC as defined in § 851(a); and

(3) gain from the sale, redemption, or other disposition of assets generating the income described in section 4.02(1) and (2) of this revenue procedure and income from the temporary investment (for a period no greater than 7 months) of the proceeds of the disposition, but only if the assets that are sold, redeemed, or disposed are original assets of the partnership. For this purpose, an asset is an original asset of the partnership if the asset is contributed to the partnership or is acquired with capital contributed to the partnership (and not with the proceeds of the sale, redemption, or other disposition of a partnership asset).

.03 *Expense test*. Substantially all of the partnership's expenses and deductions (computed without regard to items described in section 4.04 of this revenue procedure) are properly allocable to:

(1) producing, collecting, managing, protecting, and conserving the income described in section 4.02(1), (2), or (3) of this revenue procedure or the assets generating the income;

(2) acquiring, managing, conserving, maintaining, or disposing of property held for the production of the income described in section 4.02(1), (2), or (3) of this revenue procedure; and

(3) servicing the equity in the partnership.

.04 *Exclusion*. For the purposes of sections 4.02 and 4.03 of this revenue procedure, reasonable amounts charged to persons requesting information from the partnership under section 8.03 of this revenue procedure and the costs of collecting, managing, computing, and supplying the information are not taken into account.

.05 *Test Dates and Test Periods*. The income test described in section 4.02 of this revenue procedure and the expense test described in section 4.03 of this revenue procedure must be satisfied both as of the first day of the first month for which the partnership's monthly closing election is effective (the election test date) and, beginning with the fourth month after the partnership's monthly closing election becomes effective, on the last day of each month (the operational test date). The partnership determines whether the income test and the expense test are satisfied as of the election test date by reference to the election test period. The partnership determines whether the income test and expense test are satisfied as of each operational test date by reference to the operational test period. In applying the income and expense tests for a test period, a termination of the partnership under § 708(b)(1)(B) during that period is ignored.

(1) *The Election Test Period*. The election test period differs depending upon how long the partnership has been in existence (determined from its start-up date). A partnership's start-up date is the later of the date the entity had more than one owner and the date the entity had more than a *de minimis* amount of assets.

(a) If, on the election test date, the partnership has been in existence for at least 6 full calendar months, then the test period is the longer of the 6 full calendar months preceding the election test date and the portion of the partnership's taxable year that precedes the election test date; and

(b) If, on the election test date, the partnership has not been in existence for at least 6 full calendar months, then the election test period is the first 6 full calendar months of the partnership's existence.

(2) *The Operational Test Period*. The operational test period is the 3-calendar-month period consisting of the calendar month within which the operational test date falls and the preceding 2 calendar months.

SECTION 5. MAKING THE MONTHLY CLOSING ELECTION

.01 *Manner of Making the Election*. An eligible partnership makes a monthly closing election by providing in the entity's governing documents that—

(a) the partnership is making a monthly closing election that is effective as provided under section 5.02 of this revenue procedure, and

(b) all partners consent to the election.

.02 *Effective Date of the Election*. The monthly closing election is effective on the later of:

(a) the start-up date of the partnership (as defined in section 4.05(1) of this revenue procedure), or

(b) the first day of the month in which the provision described in section 5.01 of this revenue procedure is first included in the entity's governing documents.

.03 *Terminations under § 708(b)(1)(B)*. A termination of the partnership under § 708(b)(1)(B) does not terminate the monthly closing election and does not cause the partnership to close its books under § 1.706–1(c) other than as described in section 6 of this revenue procedure.

SECTION 6. MONTHLY CLOSING OF THE BOOKS

If, at the end of any calendar month, an eligible partnership has a monthly closing election in effect, then, with respect to each partner, the partnership must close its books as described in § 1.706–1(c)(2) as if each partner had sold its entire interest in the partnership on the last day of that month. Each partner must include in its taxable income for that month both the partner's distributive share of items described in § 702(a) with respect to the partner that were earned by the partnership since either the last closing of the books or the first day of the partnership's taxable year (whichever is later) and any guaranteed payments under § 707(c) to the partner that are taken into account by the partnership since the last closing of the books. If a partner is on a 52–53 week taxable year, then the provisions of § 1.441–2(e) apply as if the last day of the month were the last day of the partnership's taxable year.

SECTION 7. TERMINATION OF MONTHLY CLOSING ELECTION AND RE-ELECTION AFTER TERMINATION

.01 A partnership's monthly closing election terminates as of the first day of the month during which a partnership first fails to be an eligible partnership as defined in section 4.01 of this revenue procedure.

.02 If the partnership's monthly closing election terminates, the partnership may not make another monthly closing election without the consent of the Commissioner.

.03 A partnership's monthly closing election may be revoked only with the consent of the Commissioner.

SECTION 8. REPORTING REQUIREMENTS

.01 *Initial Filing Requirement*. A partnership must file an abbreviated Form 1065, *U.S. Return of Partnership Income*, for the first taxable year during which the monthly closing election was in effect. The abbreviated Form 1065 must be filed by the date that the partnership's income tax return for that taxable year would ordinarily be due and must be signed by a person with the authority to sign the partnership's Form 1065. The words "Filed in Accordance with Rev. Proc. 2003–84" must be typed or printed across the top of the form. The partnership is required to provide only the following information on the abbreviated Form 1065:

(1) A statement that the partnership has made an election under this revenue procedure to which all present and future partners consent;

(2) Identification of the partnership by name, address, and EIN;

(3) The name, title, address, and phone number of the contact person from whom partners, beneficial owners, middlemen, and the Internal Revenue Service may request information about the partnership;

(4) The issue date of the partnership interests and the CUSIP (Committee on Uniform Securities Identification Procedures) number or other identification of each class of partnership interest;

(5) A statement that the entity's governing documents expressly provide that the entity is making a monthly closing election; and

(6) The effective month of the election and the start-up date of the partnership. *See* section 4.05(1) of this revenue procedure for a definition of the start-up date.

.02 *Annual Filing Requirements*.

(1) *Elimination of Annual Filing Requirements*. A partnership is not required to file a Form 1065, *U.S. Return of Partnership Income*, or to issue Schedules K–1 (Form 1065) to its partners for any taxable year if the following requirements are satisfied:

(a) The partnership's monthly closing election is effective for the partnership's entire taxable year;

(b) The partnership makes the initial filing described in section 8.01 of this revenue procedure;

(c) A written partnership agreement (or other governing document) provides that —

(i) the entity and its partners will comply with the reporting requirements of sections 8.02 and 8.03, and 8.04 of this revenue procedure in lieu of complying with the requirements of § 6031(a) through (d), and,

(ii) all partners consent to such reporting; and

(d) The partnership complies with the requirements of sections 8.03 and 8.04 of this revenue procedure.

(2) *Effect of Elimination of Annual Filing Requirement*. An entity that is not required to file a partnership return under this revenue procedure is not required to file a partnership return under § 6031(a) and, as a result, is not a partnership as defined under § 6231(a)(1). Consequently, the entity and its members will not be subject to the provisions of subchapter C of chapter 63. An abbreviated Form 1065 used to make the initial filing described in section 8.01 of this revenue procedure is not considered to be a partnership return for purposes of § 6233.

(3) *Monthly Closing Election Effective for Portion of Taxable Year*. A partnership that makes a monthly closing election that is effective after the first day of its taxable year must comply with the partnership reporting rules of § 6031(a) for that taxable year (but is still permitted to close its books on a monthly basis). If the partnership also makes the initial filing described in section 8.01 of this revenue procedure by the due date for its return for the first full taxable year during which the monthly closing election is in effect, then the partnership qualifies for elimination of annual filing requirements under section 8.01 of this revenue procedure for subsequent taxable years.

(4) *Annual Reporting Required*. Failure to qualify for the elimination of annual filing requirements under section 8.02(1) of this revenue procedure does not terminate the partnership's monthly closing election. However, a partnership that fails to satisfy all of the requirements of section 8.02(1) of this revenue procedure is required to file a complete (not abbreviated) Form 1065 and to issue Schedules K–1 (Form 1065) to its partners as required by § 6031(a). A partnership that fails to file a Form 1065 or to issue Schedules K–1 as required is subject to the applicable penalties under §§ 6698 and 6722 for failure to file a partnership return and to furnish payee statements, as well as any other applicable penalties. Moreover, if a partnership is required to file a return under § 6031(a) but fails to do so, the period of limitations on assessment of tax attributable to items of that partnership remains open indefinitely under § 6229(a).

.03 *Requests for Information*. Within 45 days of a request by the Service or a partner (or a beneficial owner or a nominee of a beneficial owner), the partnership must make available all the information necessary to compute a partner's taxable income, tax-exempt income, gain, loss, deduction, or credit, including sufficient information for a partner to determine the portion of the tax-exempt interest that may be subject to the alternative minimum tax and information regarding each partner's share of any bond premium amortization under § 171, any market or original issue discount, and capital gain or loss.

.04 *Nominee and Beneficial Ownership Reporting*.

(1) If an eligible electing partnership complies with the requirements of sections 8.02 and 8.03 of this revenue procedure, the nominee reporting requirements of § 6031(c) and the regulations thereunder do not apply. In place of those requirements, the partnership and the partners must comply with this section 8.04. *See* § 1.6001–1(a) and (e) for rules that apply to recordkeeping requirements.

(2) Any person on whose behalf another person holds as a nominee an interest in an eligible partnership (a beneficial owner), other than a beneficial owner for which the relevant advisor or manager agrees to comply with section 8.04(3) of this revenue procedure, shall notify the partnership of its beneficial ownership status and provide the partnership with:

(a) its name, address, and taxpayer identification number and the name, address, and taxpayer identification number of its nominee; and

(b) the name of the partnership, its CUSIP number or other information sufficient to identify the partnership interest, and the amount of the partnership interest.

(3) In the case of a group of RICs that is managed or advised by a common, or affiliated, manager or advisor (the manager), the manager may elect to be responsible for collecting, retaining, and providing the Service upon demand the beneficial ownership information. To make such an election, the manager must provide each eligible partnership in which any of the RICs has an equity interest a statement indicating that it is responsible for collecting, retaining, and providing the Service upon demand the beneficial ownership information that otherwise would be required to be provided directly to the eligible partnerships by the beneficial owners. In addition, the manager must provide the partnership with:

(a) its name, address, and taxpayer identification number and contact information for the person from whom the Service can request beneficial ownership information; and

(b) the name of the partnership, its CUSIP number or other information sufficient to identify the partnership interests,

and the amount of the partnership interests.

SECTION 9 EFFECTIVE DATE AND TRANSITION RULES

.01 *In General*. This revenue procedure is effective on November 5, 2003.

.02 *Grandfathering Rules*.

(1) If, prior to January 1, 2004, under the provisions of Rev. Proc. 2002–16 or Rev. Proc. 2002–68, a partnership made an effective Monthly Closing election and a partner consented to the election, then the partnership and the partner may continue to comply with either Rev. Proc. 2002–16 or Rev. Proc. 2002–68, as applicable, except that monthly statements are not required.

(2) Except as provided in section 9.02(4) of this revenue procedure, if, prior to January 1, 2004, under the provisions of Rev. Proc. 2002–16 or Rev. Proc. 2002–68, a partnership made an effective Monthly Closing election and a partner consented to the election and if the partnership and partner consistently report the transaction in a manner that is consistent with an election to be excluded from the provisions of subchapter K under § 761(a), then the Service will not challenge that treatment. If section 9.02(4) of this revenue procedure causes this paragraph (2) to cease to apply, the partner and partnership remain eligible for any relief described in paragraph (1) above that they are otherwise entitled to enjoy.

(3) Except as provided in section 9.02(4) of this revenue procedure, if a partnership's start-up date is before January 1, 2004, the Service will not challenge the partnership's or its partners' tax treatment that is consistent with an election to be excluded from the provisions of subchapter K under § 761(a) for any taxable year during all of which the entity is an eligible partnership as defined in section 4.01 of this revenue procedure (without regard to section 4.01(4) of this revenue procedure). *See* section 4.05(1) of this revenue procedure for the definition of a partnership's start-up date.

(4) If, on or after January 1, 2005, a partnership acquires new assets, then, as of the first day of the month in which the new assets are acquired, the partnership is no longer eligible for the grandfathering rule provided in section 9.02(2) or (3) of this revenue procedure. For purposes of the preceding sentence, none of the following is treated as the acquisition of a new asset by the partnership:

(a) The receipt of payment (including temporary investment of that payment) on, or in respect of, a sale, redemption, or other disposition of an asset of the partnership;

(b) The receipt of a contribution in cash (including temporary investment of that cash) to fund expenses of the partnership described in section 4.03 of this revenue procedure or to fund distributions to partners in respect of accrued but unpaid tax-exempt interest (including accrued but unpaid tax-exempt original issue discount); or

(c) The acquisition of an asset pursuant to a plan to keep the principal balance of the assets in the partnership stable by reinvesting principal payments.

(5) For purposes of section 9.02(4) of this revenue procedure)—

(a) An investment is temporary if it is held for 7 months or less; and

(b) If an asset was acquired with reasonable certainty it would be a temporary investment but, due to unforeseeable circumstances, it is held for more than 7 months, then, for purposes of section 9.02(4) of this revenue procedure, it is treated as acquired on the first day that it has been held for more than 7 months.

SECTION 10 EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–68 is modified and superseded.

SECTION 11 PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1768. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information is in section 8 of this revenue procedure. The collection of information is required to obtain a benefit, and is required to inform the Service which partnerships are making the monthly closing election. The likely respondents are businesses.

The estimated total annual reporting and recordkeeping burden is 500 hours.

The estimated annual burden per respondent/recordkeeper is 1/2 hour. The estimated number of respondents and recordkeepers is 1,000.

The estimated annual frequency of responses (used for reporting requirements only) is once.

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

DRAFTING INFORMATION

The principal author of this revenue procedure is David A. Shulman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Shulman at (202) 622–3070 (not a toll-free call).